POINTS CONSIDERED.

I.

II.

III.

IV.

Supreme Court of the United States

Nos. 397 and 462 to 487.

OCTOBER TERM, 1905.

MICHIGAN CENTRAL RAILROAD COMPANY,
Appellant.
vs.
PERRY F. POWERS,
Auditor General of the State of Michigan.
26 other cases, numbered from 462 to 487, inclusive.

BRIEF OF O. E. BUTTERFIELD FOR THE RAILROAD COMPANIES, UPON THE QUESTIONS GROWING OUT OF ALLEGED UNDERVALUATIONS UPON LOCAL ASSESSMENT ROLLS, BY REFERENCE TO WHICH THE RATE OF TAXATION SOUGHT TO BE IMPOSED UPON THE PROPERTY OF APPELLANTS, IS COMPUTED.

The briefs and arguments on the constitutional questions involved in these cases will make plain to the Court the general scheme of the *ad valorem* tax law in question; will particularly call attention to the fact that the rate of taxation sought to be imposed upon the property of the appellants is the average rate of taxation levied upon property other than that included in the act (Act 173 of the Laws of 1901) for state, county, township, school

and municipal purposes; and will point out that the Supreme Court of the State of Michigan has held that this average rate must be computed by dividing the total taxes levied, for the purposes mentioned, by the total assessed value of the property upon which they are levied, without taking any account of the question whether such property is assessed at its true cash value or at something less. (See Appendix "A.")

We submit that the record shows that such other property was assessed for the year in question at something less than what the assessing officers of the state believed to be its true cash value; that no corresponding reduction was made in the valuation of the property of appellants; and we claim that these facts amount to a practical violation of the provisions of the Constitution of the State of Michigan (Art. XIV., Secs. 10, 11, 12, 13. See Appendix "B") requiring all assessments to be at cash value according to a uniform rule, and entitle appellants to a decree reducing the tax in question to such an extent as will bring about an equitable distribution of the burden as between their property and the property in the state other than that included in said act.

If the Act is invalid, this question will go out of the case. If the Act is held valid, we submit it merits consideration and to it this brief is confined.

We have made four subdivisions of the subject, as follows:

1. The extent and character of the undervaluation of such other property.

2. The full valuation of appellant's property.

3. Our right to relief, resting upon the Constitution of the State.

4. Our right to relief, resting upon equitable principles and judicial construction of the Constitution of the United States.

These points are raised upon the record by the 12th assignment of error. (R., 858).

I.

THE EXTENT AND CHARACTER OF THE UNDERVALUATION OF SUCH OTHER PROPERTY.

It Appears from the Uncontradicted Testimony that Property, Other than that Included in the Act, upon which Ad Valorem Taxes were Assessed for State, County, Township, School and Municipal Purposes was listed upon the Local Rolls, by Reference to which the Rate Sought to be Imposed upon the Property of Appellants was Computed, at only 82.7 per cent of its True Cash Value, and that such Undervaluation was Intentional and General.

In the statement of this proposition, we use the word "uncontradicted," and we wish at the outset to call particular attention to the fact that the testimony offered by the appellants upon this point is absolutely uncontradicted by any witness called to testify in behalf of the Auditor General. We bespeak for it, therefore, a sympathetic consideration and a favorable construction.

We will treat this particular sub-division in two parts, to-wit: (1) the extent of the undervaluation; (2) its intentional character.

1. *The extent of the undervaluation.*

There are in the State of Michigan about 1,300 local assessment districts. Each has an assessment roll prepared by its local assessor. Upon each assessment roll, the law requires the assessor to write a list of all the property in the district subject to local assessment. Each district has its local board of review, to which its assessment roll as prepared by the local assessor or board of assessors is submitted, and before which persons interested have a right to appear and be heard. This board of review may make such changes on the face of the roll as its discretion may dictate. The constitution, and every statute upon the subject, requires that when the certificate of this board of review is attached, the roll shall embrace a list of all the taxable property in the district, appraised at its true cash value.

Ever since the adoption of the Revised Statutes of 1838, it has been recognized by the legislative department of the State of Michigan that, in spite of these provisions of the law that property shall be valued on the assessment rolls at its true cash value there would be a disposition on the part of local assessing officers to put down something less than the true cash value, and, therefore, in the first revision of the statutes after the admission of the state into the union, an equalization was provided for by a county board of supervisors and such a provision has been retained in the law from thence hitherto. (Compiled Laws of 1897, Sec. 3857. See Appendix "C"). There are 83 counties in the state.

It is the object of this equalization to obtain a just basis for the apportionment of the state and county taxes among the several assessment districts. (Boyce vs. Sebring, 66 Mich., 217). The county board makes no change in any of the valuations appearing on the assessment roll. It determines simply whether, as between the different assessment districts, the local assessing officers have appraised the property at its true cash value, or at the same proportion thereof. They enter upon their records what they find to be the true value of the property in each assessment district, and upon such valuation the state and county tax is apportioned to the assessment districts. It is obvious that if every assessing officer listed the property in his district at its true cash value as required by law, there would be no necessity for any other equalization.

When the present constitution was adopted in 1850, the fact that local assessing officers were not in the habit of listing property on the rolls at its cash value was again recognized by a provision for a state equalization, among the counties, once in five years. (Constitution, Article XIV., Sec. 13. See Appendix "B;" see also Appendix "D" for the Act governing the State Equalization.)

The state board has nothing to do with individual assessments. It is required to determine "whether the valuation between the several counties is equal and uniform according to location, soil, improvements, production and manufactories, and also whether the personal estate of the several counties has been uniformly estimated according to the best information which can be derived from

the statistics of the state, or from any other source." (Secs. 129 to 137 of the Compiled Laws. See Appendix "D.") If they find inequality, "they shall equalize the same by adding to or deducting from the aggregate valuation of taxable real and personal estate in said county or counties such percentage as will produce relative equality and uniform valuations between the several counties in the state." There is no provision expressly requiring the equalization by the state board to bring the valuation of each county up to a cash basis, but it is obvious that such a board would have no function to perform if the local assessors listed the property at cash value.

The board met in the summer of 1901, the year preceding the assessment in question in these cases. At that meeting, the county officers were invited to present arguments respecting the treatment to be accorded them in the equalization. Hon. Chas. A. Blair, now one of the justices of the Supreme Court of the State, formerly and at the time this litigation was commenced, Attorney General of the State, but at the time of the meeting of the board of equalization a distinguished citizen of Jackson County appeared before the board and distinctly contended that "it is not the duty of the board to undertake to ascertain what the true cash value of a dollar's worth of property is in a single county in the State of Michigan" (R., 282). The Attorney General, however, advised that they must equalize at cash value (R., 286).

For some years prior to 1899, a popular demand for equal taxation occupied a prominent place in the politics of Michigan. The agitation was at first directed against the old system of specific taxation of railroad companies and certain other corporations which had been in force since the adoption of the constitution of 1850 (R., 357), but as the agitation continued, it was pointed out that if railroad property was to be taxed upon an *ad valorem* basis at the average rate paid by other property, attention should be given to the well-known fact that other property was not assessed at its true cash value (R., 364). In his message to the regular session of the legislature of 1899, the governor called upon the legislature to readjust "the assessment laws of the State in order that all property within the State shall be placed upon the assessment roll at its true value" (R., 364), and at that session, the legislature passed Act 154 of the laws of 1899 providing

for the establishment of a state board of tax commissioners (see Appendix E).

Act 154 of the Laws of 1899 (R., 365), was, in form, an amendment to the general tax law, and a glance at its provisions will plainly show that the legislature recognized the fact that the practice was general among local assessing officers to list property upon the assessment rolls at something less than what they believed to be its true cash value; and by Subdivision 9 of Section 150 of the Act, the commission created by it was expressly required to determine the true value of the property in the State subject to local assessment, and to report that value to the legislature; and, upon the theory that the system of *ad valorem* taxation was to be inaugurated for railroad property, this board was called upon to report at the same time to the legislature the true cash value of the railroad property and, to the end that the legislature might be fully advised as to the extent of the inequality that was alleged to exist between the taxation of railroad property and other property, this board was required to report the rate of taxation paid by such other property upon its true cash value, and also the rate of taxation that the railroad companies were paying upon the true cash value of their property. The railroad companies were paying specific taxes on gross earnings but the board was to find out what rate upon the value of the property the specific tax amounted to.

At the same session of the legislature in 1899, a bill known as the Atkinson Bill was passed, providing for the assessment of property of railroad companies at its true cash value by a state board of assessors and the taxation thereof at the average rate levied upon other property. The bill was much like the Act in question in this case, but it was held unconstitutional by the Supreme Court of the State in a decision handed down during the year 1899, and it was made plain by the decision that the average rate plan of taxation could not be adopted without an amendment to the constitution (R., 365).

Pingree vs. Aud. Gen., 120 *Mich.*, 95.

In December, 1899, the Governor called a special session of the legislature, and recommended the passage of a joint resolution submitting to the people an amendment to the constitution to authorize the taxation of corporate

property upon the average rate plan, etc. (R., 364). The legislature failed to adopt the recommendation. In October, 1900, the Governor called another special session of the legislature, and made a similar recommendation (R., 367). In his message to the special session in October, 1900, the Chief Executive stated that the taxable property in the State subject to local assessment was assessed at about 65 per cent of its true cash value (R., 236).

In response to the call last referred to, the legislature submitted to the people an amendment to the constitution authorizing the assessment of corporate property at its true cash value and the taxation thereof at the average rate of taxation levied upon other property. The amendment was adopted at the election held in November, 1900, and reads as follows: (We have italicized the changes.)

"ARTICLE FOURTEEN.

"SEC. 10. The State may continue to collect all specific taxes accruing to the treasury under existing laws. The legislature may provide for the collection of specific taxes from corporations. *The legislature may provide for the assessment of the property of corporations, at its true cash value, by a State Board of Assessors and for the levying and collection of taxes thereon. All taxes hereafter levied on the property of such classes of corporations as are paying specific taxes under laws in force on November sixth, A. D. nineteen hundred, shall be applied as provided for specific State taxes in section one of this article.*

"SEC. 11. The legislature shall provide a uniform rule of taxation except on property paying specific taxes, and taxes shall be levied on such property as shall be prescribed by law: *Provided, That the legislature shall provide an uniform rule of taxation for such property as shall be assessed by a State Board of Assessors, and the rate of taxation on such property shall be the rate which the State Board of Assessors shall ascertain and determine is the average rate levied upon other property upon which ad valorem taxes are assessed for State, county, township, school and municipal purposes.*

"SEC. 13. In the year *one thousand nine hundred and one*, and every fifth year thereafter, *and at such other times as the legislature may direct*, the legis-

lature shall provide for an equalization of assessments by a State board, on all taxable property, *except that taxed under laws passed pursuant to section ten of this article.*"

We call attention in passing to the fact that while Act 154 of the laws of 1899, hereinbefore referred to, made provision for the supervision by a state board of the work of the local assessors to the end that all property might be listed on the rolls at its true cash value, and while the main purpose of the amendment to the constitution was to provide for the assessment of corporate property at its true cash value, it was still assumed that it would be practically impossible to bring the other property up to its true cash value on the local rolls, and so the provision for a state equalization once in five years was retained in Section 13. No provision, however, was made for any equalization between corporate property assessed by a State Board and other property, except the general provision that all must be assessed at its cash value.

At the regular session in January, 1901, Act 173, the Act in question in this case was passed. (See Appendix F). It made the commission appointed under Act 154 of 1899, ex-officio a Board of Assessors to value Railroad Property. The first assessment of railroad property was made as of the second Monday in April, 1902, and that is the assessment involved in this case. The Board of Assessors certified that they had put down upon the assessment roll the true cash value of the railroad property (R., 3). This is the allegation in the bill of complaint and it is admitted by the answer (R., 25). When they came to the question of the average rate, they acted in accordance with the advice of the Attorney General of the State (R., 135). They construed the constitution and the Act as calling upon them to determine for themselves the true cash value of the other property without regard to the valuation appearing upon the local rolls. They divided the total tax levied upon such property for the purposes mentioned in the Act by what they found to be such true cash value, and they found such true cash value to be 1715 million dollars, which was some 296 million dollars more than the aggregate of the assessed valuations (R., 346). The assessed value was 1418 million dollars in round numbers (R., 62, 120). This was 82.7 per cent of the true cash value as determined by the Commission (Rec., 151).

We submit that this determination by the Board that the true cash value was 1715 million dollars, of which the assesed value was only 82.7 per cent is prima facie evidence of the fact for the purposes of this case, and it stands uncontradicted. It was the duty of the Board to make the determination, and every member of the Board who took part in the proceedings testified that it was a deliberate and unanimous conclusion. This appears by the certificate above referred to, and by the testimony of the members of the Board (Rec., 62, 77, 93, 126, 147). There was no other board or body in the State in the year 1902 upon whom was imposed the duty to determine the true cash value of all the property in the State subject to local assessment, and we submit that such a determination by this Board, acting in its official capacity, is evidence of the fact that the property of the State, other than that included in Act 173, was assessed in the year 1902 at only 82.7 per cent of its true cash value.

It is true that this is an average, but in view of the provision of the Act in question that the rate of taxation to be imposed upon the railroad property shall be the average rate imposed upon such other property, the average undervaluation is the proper basis for judicial action.

The State Board of Equalization met, as we have already seen, in 1901, and although urged by the advice of such men as Mr. Justice Blair that they had nothing whatever to do with the question of the true cash value of the property, added a substantial sum to the valuation of every county and found the total to be 1578 million dollars in round numbers as against the local assessment in that year of only 1328 million (R., 61, 334). It thus appears that the total assessed valuation for 1902 of 1418 million dollars did not reach the aggregate valuation fixed by the State equalization board in the previous year by 160 million dollars. The Board of Tax Commissioners advised the State Board of Equalization in 1901 that the true cash value of the property upon the local rolls that year was 1702 million dollars (R., 76).

It was argued by the counsel for the defendant in the court below that the figures fixed by the State Board of Equalization were not intended to be the true cash value but only relative valuations, but we submit such an in-

ference is unjustifiable in the face of the opinion of the Attorney General of the State given to the Board of Equalization at its request, to the effect that it was their duty under the law to equalize upon the cash value (R., 286).

The Attorney General concluded his opinion in these words:

> "For all these reasons, I would advise the Board of Equalization that it is its duty according to its best judgment and information so to equalize the various aggregate assessments that are submitted to its consideration and review that the result may express as nearly as possible the actual cash value of the taxable property of each county in the State; and for it to knowingly do otherwise would in my judgment be a gross disregard of the duties that are imposed upon it by the Constitution and laws of this State" (R., 286).

Counsel for the defendant appeared in the court below to admit the force of this finding of the Board but sought to impeach it by a study of the nature of the information upon which the finding was based. We submit such argument should be unavailing. Such a Board is not held to the strict rules of evidence applicable to a proceeding in court. "In making inquiry and collecting the facts, they are not bound by the strict rules which govern ordinary judicial proceedings."

People vs. Barker, 144 *N. Y.*, 94, 103.

The learned counsel for the defendant in the court below stated in his printed brief and contended upon the argument that the estimate made by the Governor in October, 1900, that the other property of the State was assessed at only 65 per cent of its true value referred to the assessment of 1899. The counsel then alluded to the total assessed valuation in 1899, and, treating that sum as 65 per cent, computed the true cash value to be 1483 million dollars in round numbers, and then proceeded to show that the assessed valuation had been raised to 1418 millions in 1902 which was much more than 82 per cent of the true cash value as thus estimated.

This argument is based upon erroneous premises. The assessment which the Governor estimated as 65 per cent of the true value was that of the year 1900, and not that of 1899 as stated by the learned counsel. The following is the language of the Chief Executive taken from the Journal of the House of Representatives of the State of Michigan for the extra session, October 10th to 15th, 1900:

"The following is a table showing: (1) the full values of the tangible property of the Ann Arbor Railroad and the Detroit, Grand Haven & Milwaukee Railroad made by Professor Cooley; (2) 65 per cent of the full value of the tangible property; (3) amount of taxes paid for the year 1899, under the present law taxing earnings; (4) the actual rate of taxation as based upon the valuation of the tangible property (at 65 per cent of the full cash value of the tangible property) that is now being paid under the system of taxation upon earnings; (5) amount of taxes which the railroads would pay, at 2 per cent of the valuation of the tangible property (at 65 per cent of the full cash value); and (6) amount of taxes which the railroads would pay at 2 per cent of the full value of the tangible property.

"In these comparisons, I use 65 per cent of the full cash value, because that is the average of assessments throughout the State, according to a computation made by a member of the State Board of Tax Commissioners. The average rate of taxation in the State is nearly 2½ per cent (also computed by a member of the Tax Commission), but I have used 2 per cent in showing what taxes these railroads should pay if they were assessed upon cash value, at the same proportion of full value, viz., 65 per cent, as other property in the State is assessed, and at the same rate as other property in the State is taxed. The official computation of the Tax Commission upon these two points may be completed before this session ends.

Comparison of Taxes—Value of Tangible Property.

	Ann Arbor Railroad.	Detroit, Grand Haven & Milwaukee.
Full value tangible property.	$5,700,161.00	$5,589,015.00
65% value tangible property..	3,705,105.00	3,632,859.00
Taxes on earnings paid 1899.	39,406.75	31,610.03
Rate of tax, now being paid on earnings if assessed at 65% cash value	.0106	.0087
Taxes at 2% woud pay if assessed at 65% cash value...	74,102.00	68,107.00
Taxes at 2% woud pay if assessed at full cash value..	114,003.00	104,780.00"

It will be noted that he says "(3) amount of taxes paid for the year 1899 under the present law taxing earnings," and in the table there is a column headed "Taxes on earnings paid 1899," but the figures given in that column are the taxes paid on the earnings of 1899, due and payable, however, in June, 1900, as clearly appears from page 256 of the report of the Commissioner of Railroads for the year 1900, published by authority.

Professor Adams, the statistician of the Interstate Commerce Commission, who made, as we shall see hereafter, a computation of the value of railroad property in 1900, assumed that other property was assessed at only 65 per cent of its true cash value in accordance with our understanding of the Governor's message. (R., 526, 527.)

Applying the argument of the learned counsel to the correct premises, we find that the other property was assessed in 1900 at 1317 million dollars in round numbers (R., 355), which is 65 per cent of about 2 billion dollars of which the assessed valuation in 1902 of 1418 million dollars was only 70 per cent and a fraction.

Much space was devoted in argument in the briefs in the court below to the testimony that wherever the tax commission in its reviews found that the local assessors had not assessed the property at cash value, they raised the assessments; but there is very little force in this contention, because it appears by the uncontradicted evidence that the only general reviews that were held prior to the assessment of 1902 in question were confined to seven counties out of 85 and two cities. (R., 66).

2. *The Character of the Undervaluation.*

We Claim that the Record Shows that this Undervaluation was Intentional and General and of Such a Nature as to Entitle the Railroad Companies to Relief.

After the State Board of Assessors had computed the average rate of taxation levied upon other property for the purpose of finding the rate to be imposed upon the railroad property, the Board of Education of the City of Detroit filed a petition for a mandamus to compel a redetermination of the average rate, upon the theory that the Board of Assessors had no discretion in the calculation to take for a divisor any other sum than that which appeared by the local assessment rolls to be the assessed value of the other property, and the Supreme Court of Michigan so held (Board of Education of the City of Detroit vs. State Board of Assessors, 133 Mich., 116), but in the answer to an order to show cause in that proceeding, which was signed by four out of five members of the Board, the same being all the members who took part in the assessment, appears this paragraph:

> "That, as this respondent believes and charges the truth to be, the undervaluation of the property of the State subject to ad valorem taxes for State, county township, school and municipal purposes throughout the State was not the result of accident, inadvertence, or mistakes in judgment, but that such undervaluation of such property was, in a large number of the municipalities of the State, intentional and general, and that this practice of undervaluation has been in vogue in this State for a great number of years; and that if the court desires to examine the data upon which the foregoing statements are based it will be furnished." (R., 29.)

Section 151 of Act 154 of the Laws of 1899 as it then stood required the Board of State Tax Commissioners to make an annual report to the Governor, setting forth the workings of the Commission during the preceding year and containing the findings and recommendations of said Commission in relation to all matters of taxation. In the annual report for the year 1902, published by authority, marked Exhibit C in the Record on page 17 of the report (R., 126) appears this language:

"It would be impossible to enumerate the questions raised and the matters discussed at those meetings, but with them all we emphasized the importance of listing all property subject to taxation, and assessment of all at its cash value, endeavoring to point out that equal taxation and uniformity of assessment can be accomplished in no other way; that while the old plan of assessing property at a percentage of its value prevails and each supervisor uses his own judgment of the percentage to be applied in his district there is danger of as many different percentages as supervisors in a county, and the property of no two counties would be assessed by the same standard of value."

On page 36 of the same report appears the following:

"They" (meaning the local assessors) "rarely claimed that assessments of property had been made at cash value, as the law clearly and forcibly directs, but in fact admitted the prevalence of the plan of assessing property at a percentage of its value, one claiming a high percentage for his county and another admitting a lower and confessing unlawful assessments in this respect, attempted to justify by pointing to equally bad conditions in other counties." (R., 146.)

Commissioner Sayre testified that this last statement was warranted by the experience of the Board. (R., 146.)

Witness A. F. Freeman, a member of the State Board of Tax Commissioners from the time of its organization, sworn for the complainant, testified that the statement contained on page 17 of Exhibit C to the effect that the old plan of assessing property at a percentage of its value still prevails was true (R., 126); that in the year 1902, the supervisors often admitted undervaluation (R., 124); that at least 500 supervisors admitted to him an intentional undervaluation (R., 126); that at the meeting of the State Board of Equalization in 1901, at which representatives from nearly all the counties in the State were present these representatives rarely claimed that the property in their respective counties was assessed at its true cash value, but admitted the prevalence of a plan of assessing property at a percentage of its value (R., 121); that the reason was that each assessing officer

sought to reduce the total valuation of his district as low as possible in order that it might not fare worse than its neighbors in the apportionment of the State and county taxes. (R., 123, 124.)

The witness Ira T. Sayre, a member of the Tax Commission, sworn for the complainants, testified that the statements in the report of the Commission to the effect that the plan of undervaluation prevails, and that the representatives of the counties before the State Board of Equalization admitted the prevalence of the plan of assessing property at a percentage of its cash value were true (R., 146); that four-fifths of the supervisors who had been interviewed in his presence admitted intentional undervaluation (R., 150); that the statements in the return to the order to show cause in a suit brought by the Board of Education to the effect that the undervaluation of the property of the State subject to *ad valorem* taxes for state, county, township, school and municipal purposes throughout the State was not the result of accident, inadvertence or mistakes in judgment, but that such undervaluation of such property was, in a large number of municipalities of the State intentional and general, and that this practice of undervaluation has been in vogue in this State for a great number of years was true (R., 146); that in his opinion, the undervaluation was quite general throughout the State (R., 146); that such undervaluation was intentional to the extent that each supervisor watched his neighbor and endeavored to get his valuation as low in proportion to the true value as his neighbor did (R., 146); that it was his judgment that cash value was not being used generally as a basis of assessment (R., 147).

The witness William T. Dust, a member of the Tax Commission, sworn for plaintiffs, testified that the statement contained in the report of the Commission to the effect that the plan of undervaluation still prevails, was true (R., 69); he attempted to qualify somewhat the language used (R., 70), but he admitted having sworn to the answer in the School Board case, in which it was stated that the undervaluation of the general property of the State was not the result of accident, inadvertence or mistakes in judgment, but was, in a large number of municipalities of the State, intentional and general and that the practice of undervaluation has been in vogue in

this State for a great number of years (R., 71). It will appear from a reading of the testimony that Mr. Dust was an unwilling witness, but he finally admitted (R., 72) that the statement contained in the answer in the Board of Education case was true. He further testified that in January, 1903, nearly a year after the time of the assessment in question in these cases, the assessments of general properties were still below the cash value (R., 70). He gives it as his opinion that in a large number of municipalities of the State, the undervaluation is intentional and general (R., 72), and states that assessors admitted at official meetings of the Board that they undervalued the property in their respective districts (R., 73).

The witness Jas. C. McLaughlin, another member of the State Board, sworn for complainant testified that the plan of assessing at a percentage of the true value still prevails, and that the general properties of the State were still, at the time he gave his testimony in 1903, assessed many millions below their true cash value (R., 94). He further testified that in his judgment, all the counties in the State were assessed below the true cash value (R., 94); he admitted having signed the answer in the mandamus case, in which it was stated that the undervaluation was intentional and general, and that the language used in the return was his deliberate conclusion (R., 95). It will be noted, upon a reading of his testimony, that Mr. McLaughlin was also an unwilling witness, but we submit there is nothing in it which qualifies the statement made by him under oath in the answer to the order to show cause above referred to (R., 95 to 99).

T. J. G. Bolt, one of the field inspectors of the Board, said to be one of the best men in their employ (R., 86), who had been for years a supervisor (R., 187) stated that supervisors would tacitly admit their violation of the law (R., 191). He testified as follows:

> "While the supervisor generally—as anybody knows—won't come out and say these things yet he will lead you to understand and tacitly acknowledge that he has done that, but to come right out and to say it in plain English, that he practices that which is contrary to law, and that he knows it, he won't do it, but he will give you to understand that

this is so and allow you to understand it so." (R., 191.)

And he admitted that in his county and over the State generally, as far as his knoweldge extended, it had been the habit to assess at a percentage of the true cash value (R., 193).

The conclusion of the Board, as stated in paragraph 11 of the return to the order to show cause (Exhibit E attached to the bill of complaint, R., 29) that the undervaluation throughout the State was intentional and general was not a mere guess, but was arrived at as a deliberate and official judgment of a lawfully constituted authority, after a very thorough and detailed examination of the assessments and the property covering the entire State.

Prior to the meeting of the State Board of Equalization in August, 1901, the Board of State Tax Commissioners employed a large number of men to go into the counties of the State and estimate the percentage of assessed valuation of real estate to the true value thereof by reference to the considerations named in deeds of conveyance of property in each locality as taken from the records in the office of the Register of Deeds, eliminating all conveyances which were manifestly not indicative of the true value of the property, and further verifying, as far as possible, by conversation with some person who had knowledge of the transaction the accuracy of the consideration named.

Exhibit F attached to the bill of complaint contains a table showing the result of this elaborate investigation. It shows the percentages of assessed valuation to the true value of the property in each assessment district in the State in the year 1901, in which year the total assessed valuation of all the other property in the State was 1328 million (R., 295 and following). The assessed value of the same property in 1902 was 1418 million.

It appears from this table that the percentages varied widely from as low as 22.8 per cent in the township of Germfask in Schoolcraft County to 108.7; but there were only nine assessment districts in the whole State where the percentages reached 100 per cent. There were 467 districts below 70 per cent and 390 between 70 per

cent and 80 per cent, and it is submitted that where the undervaluation is shown to be so universal and so extensive, the court will be warranted in assuming that as a matter of law it was intentional.

When the Board determined that the undervaluation was intentional and general, it was in possession of the information contained in Exhibit F, supplemented by the work of field inspectors, which continued from the time of the meeting of the Board of Equalization in 1901 to the time when the conclusion above referred to was reached in the month of April, 1903.

This determination was clearly within the broad authority given the Tax Commission by Act 154 of the Laws of 1899. They had power to make the determination, and there was no specific direction in the statute as to the method in which they should gather the information upon which the determination rested. The fact that they acted upon the reports of field inspectors employed by them does not make the determination any less conclusive between the parties to this issue.

Chandler vs. Calumet & Hecla Mining Co., 149 *U. S.*, 79.
People vs. Barker, 144 *N. Y.*, 103.

F. O. Gullifer, Secretary of the State Board of Assessors, qualified by an experience of seven years in the office of the Board of Assessors in the City of Detroit, who traveled nearly all the time for the first two years that he was connected with the State Tax Commission, looking up individual assessments of large properties, both real and personal, and making an examination of properties for the purpose of reporting to the Board of State Tax Commissioners, having conferred with supervisors and assessing officers in the State to a large extent, both personally and by correspondence, who had a comprehensive and complete knowledge of the habits and practices of assessing officers of the State since the year 1900, stated that the general properties of the State were very generally under-assessed and the personal property to a greater extent than the real estate, and that the fact is so notorious in Michigan that it is a matter of common knowledge (R., 118).

Counsel argue that it must be presumed that local assessors have done their duty, but there is no evidence in the record that any local assessor in the State certified to any assessment roll, that he had complied with the law in its preparation, and not one was called as a witness to testify that he had made any attempt to do his duty.

We submit that the record shows that notwithstanding the work of the tax commission under the Act of 1899, the valuations have not been brought up to the cash basis, and that in cases where the undervaluation continued to exist, it was as intentional as it had been previous to the work of that commission.

In conclusion, upon this branch of the argument, we submit that the evidence shows that the other property of the State was assessed at not more than 82 per cent of its true cash value in the year 1902. We base the claim upon:

1. The finding of the Board of State Tax Commissioners and State Board of Assessors that the true cash value of the property was 1715 million dollars. This was an official determination under the authority of Act 154 of the laws of 1899.

2. The sworn testimony of four out of five of the individual members of the Board, the same being all the members of the Board who took part in the assessment in question (R., 440), each one saying that this estimate of 1715 million dollars was his opinion, deliberately formed and based upon an investigation which the statute authorized and directed them to make, leaving to their judgment the manner of taking the same.

3. It is corroborated by the finding of the Board of State Tax Commissioners and State Board of Assessors in 1901, fixing the amount at 1702 million dollars.

4. It is corroborated by the finding of the State Board of Equalization, acting under the advice of the Attorney General of the State, that they must equalize upon the basis of true cash value, that the total value of the property was 1578 million dollars in 1901, when it was assessed at only 1328 million dollars. (R., 334.)

5. Upon the testimony of the Secretary of the Board and the Chief Clerk and the field inspectors all of whom gave corroborating evidence.

Judge Taft, speaking for the United States Circuit Court of Appeals, in Taylor vs. L. & N. R. R. Co. (88 Fed., 350), said that "the various boards whose united action is by law intended to effect a uniform assessment on all classes of property are to be regarded as one tribunal, and the whole assessment on all classes of property is to be regarded as one judgment." In this case, we have such a judgment and in the record thereof we find stated as plainly as language permits every element necessary to the establishment of our claim. In the record of this judgment, we find that the general property of the State, by reference to which the average rate imposed upon our property was computed, was assessed on the local rolls for the year in question at 1418 million dollars. In another part of the record of this judgment, we find that this assessment upon the local rolls was a deliberate and intentional and general undervaluation. In another part of the record, we find that the true value of that property was 1715 million dollars, of which the assessed value was 82.7 per cent and in another part of the record, as we shall see hereafter, we find that the property of the appellants is assessed at its true cash value. Upon such a record, we are entitled to the relief we seek.

II.

THE FULL VALUATION OF APPELLANT'S PROPERTY.

The Record Shows that Appellant's Property was Assessed at Its True Cash Value.

We submit this proposition under five subdivisions:

1. It is admitted in the answer. (R., 35.)
2. The certificate attached to the roll so declares.
3. In the absence of fraud, this is conclusive.
4. There is no allegation of fraud in any case except

that of the Michigan Central, and in that case there is no evidence of fraud.

5. There is no evidence of any undervaluation.

FIRST: The answer admits that "as stated in said bill, the assessment made against the property of said complainant by said Freeman, Dust, Sayre and McLaughlin in said original assessment roll and transferred to said duplicate assessment roll prepared by them, was determined and found by them to be the true cash value of the property of said complainant and the full and actual value thereof" (R., 35). After a portion of the testimony had been taken, the defendant added an amendment to the answer which is inconsistent with the language just quoted (R., 57). We will speak of that, however, in another place. We submit the admission is not affected.

SECOND: The certificate attached to the roll declares that the figures therein represent what the Board believed to be the true cash value of the property described.

The certificate attached to the roll appears on page 28 of the record, as follows:

> "We do hereby certify that we have set down in the above assessment roll all the property of railroad companies, express companies, union station and depot companies, car loaning, stock car, refrigerator and fast freight line and other car companies liable to be taxed in this State, according to our best information, and that we have estimated the same at what we believe to be the true cash value thereof, and that we have assessed the taxes thereon at the average rate of taxes for State, county, township, school, municipal and other purposes, levied throughout the State, during the present year, as determined by us."

THIRD: In the absence of fraud this certificate is conclusive.

When the determination of a question of fact such as the valuation of the property of complainants is submit-

ted by the Legislature to a State board, its determination creates something more than a mere presumption of fact, and the determination can not be overthrown by showing that the fact is otherwise.

Pittsburg R. R. Co. vs. Backus, 154 *U. S.,* 434.

In making their assessments, assessors exercise a *quasi* judicial power. In the absence of fraud, their conclusions are not open to collateral attack.

Palmer vs. McMahon, 133 *U. S.,* 669.

FOURTH: There is no allegation of fraud in any case except that of the Michigan Central, and in that case there is no evidence of fraud.

All the answers contain the following language: "That he admits" that, as stated in said bill, the assessment made against the property of said complainant by said Freeman, Dust, Sayre and McLaughlin in said original assessment roll and transferred to said duplicate assessment roll prepared by them *was determined and found by them to be the true cash value of the property of said complainant and the full and actual value thereof;* but denies that said assessment of said property of said complainant was at the true and actual cash value thereof, or that the assessments of the property of said complainant and such others appearing on said assessment roll represented the actual and true cash value thereof as required by the constitution and statute."

The answers also contained this:

> "The assessments of property throughout the State subject to advalorem assessment for State, county, township, school and municipal purposes, are uniformly nearer to cash value and to the constitutional and statutory requirements in this regard than is the property of the railroad and other corporations as assessed by the State Board of Assessors under the provisions of said Act 173, and that the assessments by the State Board of Assessors of the property of railroad and other corporations subject to its jurisdiction are not at, and do not represent, the true cash value of the property of those companies, but the property of such companies has been assessed and appears on said original and duplicate assess-

ment rolls at much below its true and actual cash value." (R., 35, 39.)

The Answer thus made is an express admission that the assessment made by the State Board of Assessors *was determined and found by the assessors to be the true cash value of the property of the complainant, and the full and actual value thereof,* accompanied by a denial by the defendant that the value as found and determined by the assessors was in fact the true and actual value of the property.

Here is no charge of any fraud on the part of or in the action of the assessors in making the assessment.

It is a statement that the assessors made the assessment according to the true cash value of the property as they found and determined its true cash value to be, with the further statement that in fact the assessment is below the true cash value of the property.

Under these Answers evidence to show that the value of the property is other than the value as assessed is not entitled to consideration. It is excluded from consideration by the authorities cited.

In the case of the Michigan Central, an amendment was made to the Answer by inserting at the end of and following said paragraph 2-b (R., 57), as follows:

> "And particularly that the said assessment by the State Board of Assessors of the property of the said complainant, Michigan Central Railroad Co., as appearing on the said assessment rolls, is not, and does not, represent the true cash value of the property of said company used in operating and carrying on its railroad business within this State subject to assessment and taxation by the State Board of Assessors as required by statute, but that the property of the said complainant has been assessed and appears on said original and duplicate assessment rolls at an amount much below its true and actual cash value; that the said assessment on tax rolls, and the said assessment of property of the said complainant appearing, do not express or represent the true and honest judgment of its several members; that he believes, and charges the truth to be, that the said under-assessment of the property of the said complainant by the said State Board of Assessors, is not the result of inadvertence, mistake or accident, but

that such under-assessment and under-valuation was intentionally and wilfully made."

The language above referred to, that, "as stated in said bill, the assessment was made against the property of said complainant by said Freeman, Dust, Sayre, and McLaughlin, in said original assessment roll and transferred to said duplicate assessment roll prepared by them was determined and found by them to be the true cash value of the property of said complainant and the full and actual value thereof," still remains.

It is submitted that under the Answer as it stands, with this express admission, the testimony given in the case of the Michigan Central to show that the value of the property is greater than the assessed value is not competent and should not be considered, notwithstanding the subsequent charge made by the amendment upon the *defendant's belief* that an under-assessment and under-valuation was intentionally and wilfully made.

The assessment by the State Board of Assessors is to be impeached only upon a distinct case averred by the defendant of a fraudulent assessment made by the Board. When the case stated contains the explicit admission that the assessors made the assessment at the true cash value of the property, *as they found the true cash value thereof to be,* the admission is made upon the record of the case that there was no fraud in the assessment.

If the evidence shall be considered by the Court, then, before rejecting the assessment made by the State Board of Assessors, it must appear to the court from the evidence that the action of the State Board of Assessors in making the assessment as it stands upon the assessment roll was fraudulent in the sense that the members of the Board wilfully and intentionally, in violation of their oaths of office, made the assessment at a sum which was less *than they believed the true cash value of the property to be.*

It is submitted that the evidence does not authorize such conclusion.

The most that can be claimed for the averment of the answer as amended is:

1. That the property of complainant was assessed by the State Board of Assessors at much below its actual cash value.

2. That such under-valuation was not the result of inadvertence, mistake or accident, but was intentionally and wilfully made.

It will be argued, we infer, that this allegation is sustained by the testimony of the witnesses McLaughlin, Dust and Walker.

McLaughlin and Dust were members of the State Board of Assessors, and participated in the assessment in question, and we anticipate that it will be contended that their testimony shows that they intentionally and wilfully assented to a valuation of the property of complainant at less than they believed to be its true cash value.

The witness Walker was employed by the Board of Assessors in the capacity of expert engineer.

Upon grounds of public policy, the testimony of witnesses McLaughlin and Dust is incompetent to impeach their own conduct as members of the State Board of Assessors for the purpose of invalidating the action of said Board in which they participated, on the same principle which precludes members of a jury from giving evidence of their own misconduct to impeach their verdict; as, for instance, that they did not, at the time they assented to the verdict, or at any time, believe it to be right, but were over-persuaded by their associates to give a formal assent in order to avoid a disagreement.

Assuming that the testimony of the witnesses McLaughlin and Dust is competent, it does not sustain the allegation that complainants' property was intentionally and wilfully undervalued or that it was, in fact, undervalued.

The testimony of the witness McLaughlin, condensed by omitting questions, but in other respects substantially literal, is as follows:

On direct examination—

"In many cases the final values were not according to the opinion of the members at first. I hardly know what you mean by 'of compromise.' If you mean to give and take, why, I do not recall anything of that kind being done. Certain members of the

Board were very insistent upon the valuations of some of the property, and other members of the Board finally yielded and agreed to those valuations, or approached them, and the roll was signed. On the Michigan Central the valuations finally reached were not the valuations of a portion of the Board to start with, or, in fact, until the very last hours of our meeting. The valuations thought to be right by a portion of the Board were very much higher in both cases than the valuation finally agreed upon.

"My first value, or the value that I wished placed upon the Michigan Central railroad property, was $55,000,000. I yielded to $50,000,000 just before signing the roll in the first place. I mean before the review began. And finally, in the last moment, I yielded to a cut made of $45,000,000. This was after the review, actually at the very last moment. (R., 431).

Q. Did you have a talk with Mr. Sayre in which he stated to you, in substance, that if you kept down the assessed values of the roads there would be no litigation arising in consequence of your assessment, and that he could find out for you what the railroads would be willing to stand?

A. There was a conversation between Mr. Sayre and me to that effect.

Q. I wish you would state what the conversation was?

A. Well, Mr. Sayre had insisted that the valuations we were likely to place upon the roads were higher than the roads would stand for, and that the result would be litigation and possibly a loss of the entire tax, and at one time he stated to me he could find out what assessments the railroads would be satisfied with, and on what assessment they would pay the tax without litigation; and he asked me if I wanted him to find out, and I told him no, he need not find out for me; I didn't want to know. (R., 433).

"The $46,000,000 on the Michigan Central did not represent my judgment. My judgment was that it should be higher. When the final roll was signed with the valuation of the Michigan Central at $45.-000,000, that was still more remote from my best judgment. If I had had my own way in these matters, some of the figures would have been different, but I yielded to the arguments, etc., of other members of the Board, and finally consented to those figures."

Q. Did they or did they not at the time you signed the roll represent your honest judgment of the true cash value of the various properties?

A. They represented what I was willing the roll should stand at. As I have said, if I had had my own way, it would not have been quite that. (R., 434).

Q. You have spoken of two railroads as to which the figures on the roll did not represent your judgment of the true cash value, the Pere Marquette and the Michigan Central, as I understood you. Were there other roads in the same situation? Were there other instances on the roll where the valuation finally fixed did not meet your honest judgment of the true cash value?

A. There were others where I did not agree in the first instance with the figures finally reached. (R., 437).

Q. Were there any, where you did not agree in the last instance?

A. There were none that I did not consent to and finally approve?

Q. Answer my question. You are a lawyer and you know what my question is, and I wish you would answer it. Were there any, where you did not agree in the last instance?

A. No, I agreed to all of them. (R., 437).

The witness Dust testified as follows:

"Prior to the beginning of the review the Michigan Central was 51 or $52,000,000, and the Pere Marquette 36. These figures were changed the last evening before the review was had through arguments by some of the members and a desire on the part of myself to compromise with the other members of the Board to agree on a value." (R., 439.)

"I consented to the figures as finally fixed, feeling myself as not entirely and solely able to value this vast property, and having full confidence in the other members of the Board and in their judgment and their honesty, that possibly I might be mistaken and that the values as placed and argued for by some of the other members were likely as near true as mine were." (R., 439).

Q. State whether or not the arguments which were made in 1902 with reference to the change of value which, as you recollect, approximately you had

fixed at 52 and 36 respectively for the Michigan Central and Pere Marquette, the arguments on behalf of the supporters of the change were calm and dispassionate or to the contrary?

A. Sometimes they were calm and again they were not.

Q. Were there any threats or was any intemperate language used by other members of the Board for the purpose of bringing about a reduction?

A. Not towards me; no, sir.

Q. Towards others in your hearing?

A. Yes, sir.

Q. State what they were, please?

A. Why, I remember of one remark made by a member to Mr. Jenks, in which the gentleman—the member—said, "By God, I won't vote with the minority of this Board all the time. I want you to understand there will come a time when I will be voting with the majority."

Q. Who was the member that made that statement?

A. Mr. Sayre.

Q. Mr. Jenks at that time was a member of your Board?

A. Yes, sir.

Q. And Mr. Jenks' term was about to expire, was it?

A. Yes, sir.

Q. Was Mr. Jenks present when the review was closed and the final assessment made?

A. He was not; he was not a member. (R., 440).

"If it had been left to myself, I believe I would have placed it at a higher figure than that (referring to the Michigan Central). Mr. Freeman's argument won me over from my former one. I stuck out finally and thought I would never go below 48 after we had talked and up to the last night, but Mr. Freeman was very insistent and very earnest about the reduction on the Michigan Central, and having full confidence in Mr. Freeman and in his integrity and judgment and intelligence, as I have said before, I did not know but what he knew more about the properties than I did."

Q. Now, did that final figure represent your own individual judgment after reconsideration?

A. I can only answer that question that if it had been left to myself it would not have been fixed at that figure. (R., 441).

Q. Then the final result, at least as to the Michigan Central and Pere Marquette, did not represent the result of your individual consideration?

A. It did not.

Q. What was the fact as to other roads than those two? Were the final figures those which your own individual judgment would have fixed in every instance?

A. I would not care to state positively at this time as to just where my own figures were upon all the other roads. There were a great many of them. Some I undoubtedly had higher than others. Some I probably had a little lower than some of the others did.

Q. Then your own best recollection at this time would be that there were several other instances in the finally completed roll where your judgment, your individual judgment, did not concur with the conclusions adopted by the Board?

A. That is right, sir. (R., 442).

Q. At the time the roll that is in litigation was finally approved and became perfect, January 15th, under the old law, at that time how many tax commissioners or assessors were in office and acting?

A. Four.

Q There was yourself and Mr. MeLaughlin—

A. Yes, and Mr. Freeman and Mr. Sayre.

Q. On or about the 14th of January, 1903, you four gentlemen did join in singing the statutory certificate or warrant to the corrected and finally approved roll, did you not?

A. Yes, sir.

Q. And it was duly delivered by you as a basis of collection to the Auditor-General?

A. Yes, sir. (R., 443).

It cannot be reasonably contended that the testimony of these witnesses shows or tends to show that the two members other than these witnesses acted in bad faith; that is to say, contrary to their honest conviction, in assenting to the valuations which were finally agreed upon by the Board.

If, then, such property was intentionally and wilfully assessed at less than its true cash value, the only members of the Board guilty in the premises are these two witnesses. The question presented, then, is, whether the

testimony of these two witnesses is sufficient to establish the fact that they intentionally and wilfully assented to and joined in making the assessment at less than they honestly believed to be the true cash value of the property.

We submit that their testimony wholly fails in that regard.

McLaughlin's testimony, it will be noticed, is somewhat fuller and perhaps stronger (although that is hardly the proper word, we think) than that of Dust. But it, we submit, cannot be so construed as to convict him of admitting that he intentionally and wilfully signed the assessment roll, then honestly believing the valuation agreed upon as to complainant's property to be at less than its true cash value.

The testimony shows that, as might have been expected, all the members of the Board were not at first agreed as to the valuation which should be put upon the property of several of the companies, especially the Michigan Central and the Pere Marquette. It would have been very strange if it had been otherwise. There were discussions between the members disagreeing, and sometimes such discussions were undoubtedly somewhat heated; but the testimony fails to show any particulars in that regard except that the witness Dust, in answer to the question whether any threats or intemperate language were used by members of the Board of Assessors for the purpose of bringing about a reduction, alluded to a remark made by Mr. Sayre, addressed to Mr. Jenks, to the effect that he, Sayre, would not always be voting with the minority. Mr. Jenks ceased to be a member of the Board before the final completion of the assessment, and just how this can be construed into a threat for the purpose of bringing about a reduction it is somewhat difficult to see.

Both McLaughlin and Dust plainly stated that they gave their formal consent to the final roll and signed the certificate attached thereto, in which it was stated that the roll was made up in accordance with the provision of Act 173 of the Laws of 1902. This certificate was signed on the 12th day of December, 1902. (R., 347; R., 28.)

On the 14th day of April, 1903, both these witnesses signed and swore to the return to the Supreme Court in the mandamus case in which, in paragraph 8, appearing on page 44 of Exhibit "E" attached to the bill of com-

plaint, they reasserted that the contents of the certificate attached to the original roll, stating that they had set down in the assessment roll all the properties of the various companies, and had estimated the same at what they believed to be the true cash value thereof; and on the 9th day of May, 1903, after the Supreme Court had determined that the average rate must be computed by a different method, they signed another certificate of their redetermination of the average rate and made no change whatever in the valuations appearing on the roll. (R., 482).

It is stated in Section 8 of Exhibit "E," attached to the bill of complaint, on page 43, that after careful examination and consideration of reports and other information bearing upon the true cash value of said property of the railroad companies, the Board "assessed the same at its true and actual cash value in every instance; that it believes the said assessments of the said property of said corporations subject to taxation under the provisions of said Act 173 represent the true and actual value of such property so assessed as nearly as it is possible to estimate and obtain the same."

It would seem that nothing more need be said in this connection. If the situation were changed, and the complainants were seeking to invalidate this assessment upon the ground that the valuation was largely in excess of the actual value of the property, and it was intentionally and wilfully made by the Board and the testimony of like character and effect to that of these two witnesses, members of the Board, were reversed, so as to bear upon the question of over-valuation, and introduced, would the Court give it the slightest consideration as tending to show that such two members intentionally and wilfully joined in such over-valuation? It seems to us that there can be but one answer to this question, and that a negative one.[1]

(1) But what if the Court should find that two out of four of the acting members of the Board signed a roll which did not represent their judgment of the true cash value of the properties assessed thereon, what would then become of the roll in this case? Would it not be void, and would not the Court be bound to enjoin the collection of the tax which it purports to impose? The complainants were entitled to the honest judgment of the true cash value of the properties by a majority of the members of this State Board of Assessors, and any roll which does not record such honest judgment is no roll at all. We submit that this Court cannot substitute for the purposes of this case the judgment of Prof. Adams or any other witness as to what the true value is in order to hold the roll valid simply because the witnesses say the valuation fixed by the Board was less than the true value.

The witness James Walker testified that in his opinion certain members of the Board appeared to be anxious to crowd down the valuation of certain railroad properties; that Mr. Sayre wanted a low valuation on the Pere Marquette and Mr. Freeman wished a low valuation on the Michigan Central, (R., 638); that they evinced more anxiety about reaching low values for the Pere Marquette and Michigan Central than any other of the railroad systems. (R., 638).

Q. Can you state any facts or can you state anything which would indicate or tend to indicate that those gentlemen were interested in placing low valuations upon the properties of the two systems mentioned?

A. Not otherwise than the stand which they took at the very start of the valuation of those two properties. Their valuations seemed to be fixed in advance.

Q. What figures did Mr. Sayre stand at on the Pere Marquette first?

A. I do not recall the exact figures, but it was below 25 million dollars.

Q. What figures did Mr. Freeman have in mind for the Michigan Central?

A. About 42 millions, as I remember it. (R., 638).

Q. And during the entire assessments, was there an effort on the part of Mr. Sayre and Mr. Freeman to secure assessments of these properties at or near the figures which you have mentioned?

A. There were.

Q. Did Mr. Freeman state in your hearing that these great railroad corporations had a good deal of power and influence in politics, and it was proper for a man who wanted to stay in public life to favor them?

A. He made a remark in my presence in the office of the Tax Commissioner in Lansing, and in the presence of a half a dozen others, to the effect that the power of these great corporations could not be neglected.

Q. Do you remember the appearance in the Detroit Free Press or some other Detroit paper of an interview or a purported interview which indicated that Mr. Sayre was interested in placing a low value on certain railroads, and that there was a constant

effort on his part in Board meetings to keep down the value?

A. I remember that there was an article that appeared in the Detroit Free Press in which Mr. Sayre was pictured as the low valuer on the Board. (R., 639).

Q. Were you subsequently charged with having given that interview?

A. I was.

Q. By whom?

A. By Mr. Sayre and Mr. Freeman.

Q. And what was said to you at that time?

A. They told me that if I wrote that article they would take my head off, and I told them they were welcome to go ahead and try. If I told all that I knew a great many people would not be resting as well as they were. They shook hands with me and left the room and said they would let the matter drop. (R., 639).

There are twenty-seven appellants. There is no claim that the testimony shows any fraud on the part of the Board as to the valuation of the property of any of the complainants except the Michigan Central, and we submit that the testimony as to this company, which we have just examined, fails to support the charge of fraud. It is therefore submitted that the certificate is conclusive evidence that the Board intended to assess the property at its true cash value.

Moreover, the motive which is known to actuate many a local assessor in the preparation of his assessment roll, to wit: that the assessing officers in the neighboring districts are not assessing at the full cash value, was entirely absent in the case of the assessments of the railroad property for the reason that at the time the Board fixed the valuations, on or about the 14th day of January, 1903, (R., 443), they had taken care of the under-valuation on local assessment rolls in the computation of the average rate, by swelling the divisor to represent their judgment of the true cash value of such property, The method of computaion of the average rate was not attacked or questioned until the 18th day of February, 1903, when the Board of Education of the City of Detroit made a demand upon the Board of Assessors for a change in the method of computation (R., 27).

We shall see, hereafter, that in obedience to the command of the legislature contained in Act 154 of the Laws of 1899, the Board of State Tax Commissioners had caused a valuation to be made of all the railroad property in the State, as of the month of November, 1900. The work was done by Professors Cooley and Adams of the University of Michigan, to whom we will refer again, and the result of their appraisal was 202 million dollars in round numbers. The Board of Assessors had these figures before them when they made the roll in question. The total valuation reached by the Board prior to the review was 208 million, which was modified on the review to 198 million (R., 636). These facts certainly tend very strongly to negative any charge of fraud.

FIFTH. There is no evidence of any undervaluation of the railroad property.

Independently of the charge of fraud on the part of the members of the State Board of Assessors in fixing the valuation of railroad property upon the assessment roll in question, it is claimed on the part of the defendant that it is a complete answer to our case if they show that the railroad property was in fact undervalued on the roll to the same extent as other property, and in support of that claim they have taken testimony, subject to our objection that it was incompetent and immaterial, which they claim tends to show that the railroad property, or some of it at least, was in fact worth more than it was assessed at.

In their effort to prove the value of railroad property, they offered as witnesses Professor M. E. Cooley, a Mechanical Engineer of the University of Michigan, who furnished what was called the "physical appraisal" or the cost of reproduction of the physical elements; and Professor Henry C. Adams, a teacher of political economy in the University of Michigan, who furnished testimony as to the value of the non-physical elements of the railroad property. Each Professor had a number of assistants who were also sworn.

As far as the physical appraisal was concerned, it appears in the record that Professor Cooley was employed by the State Board of Tax Commissioners, acting under the authority conferred by Act 154 of the Laws of

1899, above referred to, to make a physical appraisal of all the railroad property in the State as of the month of November, 1900. This appraisal was made in order to enable the Board of Tax Commissioners to report to the Legislature, as commanded by said act, what rate of taxation the railroad companies were paying upon the true cash value of their property.

In 1903, after this litigation arose, the State authorities employed Prof. Cooley to supplement his appraisal of 1900 by an examination which would enable him to determine what change had taken place in the property during the interval between the month of November, 1900, and the month of April, 1902.

The record contains the following statement (R., 489):

"The defendant introduced the testimony of Prof. Mortimer E. Cooley, dean of the department of engineering of the University of Michigan, and of a large number of civil and mechanical engineers (all of which was uncontradicted), that they had together, under the direction and supervision of said Cooley, made an appraisal of the physical properties of the various railroads concerned in the litigation herein for the year 1900 as of November of that year, and that in the year 1903, after this suit was begun, they made another appraisal of said physical properties as of April 15, 1902, and that the cost of reproducing such physical properties at said respective dates, after making proper deductions therefrom on account of depreciation from use and wear, is as shown by the following table,—no cash, accounts, materials or supplies being included in the 1900 appraisal:

Name of Road.	1900. Physical.	1902. Physical.
Ann Arbor System	$ 6,059,945	$ 6,978,346
Chi., Mil. & St. Paul	2,651,153	3,687,816
Chicago & Northwestern	13,106,148	14,625,191
Copper Range	1,151,701	2,713,943
Detroit & Mackinac	3,455,914	3,976,427
Duluth, S. S. & Atl.	8,770,724	9,087,095
Escanaba & L. Superior	664,159	869,818
Gogebic & Montreal R.	378,732	384,650
G. R. & I. System	9,603,447	10,833,307
Grand Trunk Western	5,555,887	6,864,084
Chi., Det. & C. G. T. Junc.	2,579,836	2,850,556

Cinn., Sag. & Mack.....	1,089,748	1,182,227
742 D., G. H. & M.....	6,195,171	7,058,425
Mich. Air Line.....	1,188,089	1,730,829
St. Clair Tunnel.....	1,574,625	1,620,340
Tol., Sag. & Muskegon.....	1,083,104	1,312,959
L. Sup. & Ishpeming.....	1,864,940	1,962,101
Lake Shore System.....	9,876,234	18,803,011
Manistee and Northeastern...	1,183,623	1,383,907
Marquette & Southeastern....		433,377
Mich. Central System.....	35,463,517	43,151,815
Mineral Range System.....	1,953,764	2,880,253
Minneapolis, St. Paul & Sault Ste. Marie	4,016,206	4,557,262
Munising	732,566	642,246
Pontiac, Oxford & Nor.....	929,320	1,064,836
Sault Ste. M. Bridge Co.....	263,660	313,903
Wisconsin & Michigan.....	358,244	302,975

It will be noted that it is nowhere claimed that the figures given by Prof. Cooley represent values. A railroad may be worth more or less than it would cost to reproduce it at any given time. Prof. Adams is the man who testifies as to the value. The result of the physical appraisal of the cost of reproduction as given by Prof. Cooley is simply one of the steps in Prof. Adams' formula for determining the value of the property of a railroad company.

Prof. Adams made a valuation as of November, 1900, and he also was requested by the State authorities, after this litigation arose, to supplement his work by such an examination as would enable him to tell what increase, if any, had taken place between the month of November, 1900, and the month of April, 1902.

What we say is that an examination of the plan of valuation used by Prof. Adams will discredit it, and after such an examination, we shall submit to the Court that his testimony does not prove that the valuation as fixed by the State Board of Assessors upon the assessment roll in question was less than the true cash value of the property described.

Mr. Adams appraised the property of the appellants in 1900, and the Board had his figures before it in the preparation of the roll in question. The following table shows the figures of Prof. Adams for November, 1900, and the figures adopted by the Board of Assessors on the roll (R., 544):

	Valued by Cooley and Adams in 1900.	Assessed by Board in 1902.
Ann Arbor	$ 6,392,388	$ 7,582,000
Chicago, Milwaukee & St. P.	2,651,153	3,400,000
Chicago & Northwestern	15,250,362	14,750,000
Copper Range	1,151,701	2,100,000
Detroit & Mackinac	3,851,858	4,100,000
Duluth, South Shore & Atl.	12,449,538	12,500,000
Escanaba & Lake Superior	664,159	1,125,000
Gogebic & Montreal River	378,732	380,000
Grand Rapids & Ind. System	10,544,790	11,500,000
Grand Trunk Western	8,447,130	11,000,000
Chgo., Det. & Canada G. T. Jct.	2,579,836	2,200,000
Cincinnati, Sag-w & Mackinaw	1,089,748	750,000
Detroit, Gd. Haven & Milw.	6,195,171	6,195,000
Michigan Air Line Railway	1,188,089	600,000
St. Clair Tunnel	1,574,625	1,800,000
Toledo, Saginaw & Muskegon	1,083,104	650,000
Lake Superior & Ishpeming	1,864,940	1,400,000
Lake Sh. & Mich. Sou. System.	14,492,977	18,000,000
Manistee & Northeastern	1,650,213	1,500,000
Marquette & Southeastern	not valued	440,000
Michigan Central System	$49,633,417	$45,000,000
Mineral Range System	2,817,650	2,000,000
Soo Line	4,016,206	5,100,000
Munising	732,566	410,000
Pontiac, Oxford & Northern	929,320	1,000,000
Soo Bridge	530,285	400,000
Wisconsin & Michigan	358,244	225,000
Total	$152,518,202	$156,107,000
Deducting the amount of Marquette & Southeastern, which was not figured in 1900		440,000
		$155,667,000

From this table it appears that Professor Adams found the value of the property of appellants to be $152,518,202. In this appraisal, he omitted the Marquette & Southeastern. The Board assessed the property of the same companies in 1902 at $155,667,000.

The following is a table showing the valuation fixed by the State Board in 1902, the valuation fixed by Professor Adams in 1900, and the valuation fixed by Professor Adams in 1902: (R., 544).

	Assessed Valuation in 1902.	Valued by Cooley & Adams in 1900.	Valued by Cooley & Adams in 1902.
Ann Arbor	$ 7,582,000	$ 6,392,388	$ 7,640,282
C., M. & St. P..	3,400,000	2,651,153	3,400,000
Chicago & N. W.	14,750,000	15,250,362	14,750,000
Copper Range ..	2,100,000	1,151,701	2,100,000
Det. & Mackinac	4,100,000	3,851,858	4,848,247
D., S. S. & A...	12,500,000	12,449,538	13,606,288
Esc. & L. Supr..	1,125,000	664,159	1,125,000
Gog. & M. River	380,000	378,732	380,000
G. R. & I. System	11,500,000	10,544,790	12,670,715
G. T. Western...	11,000,000	8,447,130	10,312,055
C. D. & C. G. T. J.	2,200,000	2,579,836	2,200,000
Cin., Sag. & Ma'k	750,000	1,089,748	750,000
Det., G. H. & M.	6,195,000	6,195,171	6,195,000
Mich., Air L. Ry	600,000	1,188,089	600,000
St. Clair Tunnel	1,800,000	1,574,625	1,800,000
Toledo, S. & M..	650,000	1,083,104	650,000
Lake Sup. & Ishp	1,400,000	1,864,940	1,400,000
L. S. & M. S. Sysm	18,000,000	14,492,977	14,492,977[1]
Manistee & N. E.	1,500,000	1,650,213	1,714,900
Mar. & S. E...	440,000	440,000[2]	440,000
M. C. System....	45,000,000	49,633,417	63,900,211
Min. R. System.	2,000,000	2,817,650	2,000,000
Soo Line	5,100,000	4,016,206	7,960,286
Munising Ry. ...	410,000	732,566	410,000
Pontiac, O. & N.	1,000,000	929,320	1,488,046
Soo Bridge	400,000	530,285	530,285
Wisconsin & M..	225,000	358,244	325,000
Totals	$156,107,000	$152,958,202	$177,689,292

(1) No valuation fixed in 1902, so we have used the figures of 1900 without any increase.

(2) No valuation fixed in 1900, so we have used the figures of 1902.

Following is a list of the roads as to which it is not claimed by the defendant that there was any under-valuation by the State Board, with a statement of the valuation fixed on the assessment roll, and the valuation sworn to by Professor Adams as of April, 1902. (R., 544).

	Assessed in 1902.	Valued by Adams in 1902.
Chicago, Milwaukee & St. P..	$ 3,400,000	$ 3,400,000
Chicago & Northwestern.....	14,750,000	14,750,000
Copper Range	2,100,000	2,100,000
Escanaba & Lake Superior...	1,125,000	1,125,000
Gogebic & Montreal River....	380,000	380,000
Grand Trunk Western.....	11,000,000	10,312,055
C., Det. & Canada G. T. Jct..	2,200,000	2,200,000
Cincinnati, Sag. & Mackinaw.	750,000	750,000
Detroit, Gd. H. & Milwaukee.	6,195,000	6,195,000
Mich. Air Line Ry.....	600,000	600,000
St. Clair Tunnel.....	1,800,000	1,800,000
Toledo, Saginaw & Muskegon.	650,000	650,000
Lake Superior & Ishpeming..	1,400,000	1,400,000
Lake Shore & M. S. System...	18,000,000	uncontradicted
Marquette & Southeastern....	440,000	440,000
Mineral Range	2,000,000	2,000,000
Munising	410,000	410,000
Total	$67,200,000	

These companies are therefore entitled to a decree on this branch of the case and may be dropped from further consideration.

The following is a list of the roads as to which it is claimed that there was some undervaluation by the Board, with the assessed value and the valuation as sworn to by Professor Adams for April, 1902, although, as we have seen above, there was no pretense that there was any intentional undervaluation except as to the Michigan Central. Indeed, there is no allegation in the answer to the bill of any other company that there was any intentional undervaluation. (R., 544).

	Assessed in 1902.	Valued by Adams in 1902.
Ann Arbor	$ 7,582,000	$ 7,640,282
Detroit & Mackinac	4,100,000	4,848,247
Duluth, S. Shore & Atlantic	12,500,000	13,606,288
Gd. Rapids & Indiana System	11,500,000	12,670,715
Manistee & Northeastern	1,500,000	1,714,900
Michigan Central System	45,000,000	63,900,211
Soo Line	5,100,000	7,960,286
Pontiac, Oxford & Northern	1,000,000	1,488,046
Soo Bridge	400,000	530,285
Wisconsin & Michigan	225,000	325,000
Total[1]	$88,907,000	$114,684,260

As to these roads we give below in one column the valuation as fixed by Professor Adams in 1900, and in a parallel column the valuation fixed by him for 1902. (R., 544).

	Valued by Adams in 1900.	Valued by Adams in 1902.
Ann Arbor	$ 6,392,388	$ 7,640,282
Detroit & Mackinac	3,851,858	4,848,247
Duluth, S. S. & Atlantic	12,449,538	13,606,288
Grand Rapids & Ind. System	10,544,790	12,670,715
Manistee & Northeastern	1,650,213	1,714,900
Michigan Central	$49,633,417	$63,900,211
Soo Line	4,016,206	7,960,286
Pontiac, Oxford & Northern	929,320	1,488,046
Soo Bridge	530,285	530,285
Wisconsin & Michigan	358,244	325,000
Total	$90,356,259	$114,684,260

We submit that an examination of the process by which these results were arrived at will show that they are not worthy to be considered as proof upon which the Court will be justified in finding that the valuations fixed by the State Board were anything other than the true cash value of the respective properties.

(1) As to the Lake Shore System, Prof. Adams gives no valuation for 1902, because he claims that he did not believe that the data were reliable. (Record, 547.) And it will be noted that in 1900 he fixed the value of the Lake Shore System in Michigan at $14,492,977, which was $3,500,000 less than the valuation by the State Board on the roll in question.

This subject falls naturally into two sub-divisions:

1. The appraisal of 1900.
2. The appraisal of 1902.

The Appraisal of 1900.

It is claimed on the part of the defendant that the property of a railroad company may consist of two elements of value, one, physical, and the other non-physical, and that this non-physical element may be detected by an analysis of the net earnings of the company. If the net earnings are in excess of the amount required to pay "a fair return" upon the cost of reproduction of the physical property—not its original cost, but what it would cost to reproduce it at the time of the investigation—such excess discloses the existence of a non-physical element, the extent of which may be determined by capitalization. Professor Adams is the witness upon whom they rely for the non-physical valuation, and this is his formula:

> "In 1900 I was called upon by the Michigan State Tax Commission to determine whether railroads were paying a tax rate on their value equal to the rate on other property. With that problem in view, I formulated this inventory plan as follows:
>
> "First. I began with the gross earnings from operation; from this I deducted the aggregate operating expenses; to the remainder (termed 'income from operation') I added the income of corporate investments, the sum being termed 'total income.'
>
> "Second. I deducted from the total income as an annuity chargeable to capital, a certain per cent on the appraised value of the physical property. This accepts a certain amount as necessary to support it which is regarded as capital.
>
> "Third. From this amount I deducted rents paid for leases of property operated,—if such property is not covered by the physical examination and made the basis of the above annuity. The remainder, if any, represents the surplus, which, capitalized at a certain rate, gives the value of the non-physical property." (R., 500).

In other words, to practically apply this system to the Michigan Central Railroad property, for example, as he applied it in 1900: He found the average net earnings

for a period of ten years from the reports of the company to the State officers. From this amount he deducted an annuity of 5 per cent. on the sum which Prof. Cooley said it would cost to reproduce the road in its then condition, and capitalized the balance at 7 per cent. To this last result he added the physical appraisal, and the total was his estimate of the value of the road. (R., 525). We have no means of knowing from this record that the Board did not use the Adams' method of computation with slightly different rates for the annuity and capitalization.

It is obvious that very much depends upon the rates used for the annuity and capitalization; and these rates are determined by reference to the Professor's opinion of the rate which investors in securities of a railroad of the class under consideration would be willing to receive as a net return upon their investment. (R., 501).

In the case of the Michigan Central he allowed an annuity of 4% on the engineer's estimate of the present cost of reproduction of the physical property, which was equal to saying that the company was entitled to earn not more than 4% on its investment in physical property; and he capitalized the remainder at 6%, which is the same as saying that the company was entitled to earn a net return of not more than 6% on its non-physicial property. He added to the 4% in the case of the physical property and to the 6% in the case of the non-physical property, 1%, which he understood to be the average rate of taxation paid upon other property in the State at that time, having excluded taxes from operating expenses in ascertaining the net earnings. (R., 525).

OBJECTIONS TO THE PLAN.

This scheme for the valuation of the taxable property of a railroad company is an invention of Prof. Adams. It was promulgated in October, 1900. (R., 514.) And before proceeding to show the details of its marvelous growth in eighteen months, we desire to call attention to some of the objections to it, as a method of arriving at the valuation of the property of complainants for the purposes of this case.

1. It violates the statute in that it directly values the franchises.

2. It violates the statute in that it takes into consideration other elements of non-physical value than franchises.

3. It violates the statute and the Constitution in that it takes into consideration elements of value which are not taken into consideration in the valuation of other classes of property for the purpose of taxation.

4. It violates the statute in that it imposes a tax which is not entirely *ad valorem*, but in part at least an income tax.

5. It is not in accord with practical business experience, in that it assumes that the net yield to investors, in stocks and bonds at the current market prices in Wall Street, affords a criterion of the proper rate to be used in capitalizing net earnings, to ascertain the value of property from which they are derived.

First. The Adams Plan of Valuation Violates the Statute in that it Directly Values the Franchises.

The statute provides, in Section 4, that it shall be the duty of said Board to make an annual assessment upon a roll to be prepared by said Board, of the property having a situs in this State, as hereinafter defined, etc., and it provides in Section 5 that "the term property as used in this act shall be deemed to include all property, real or personal, belonging to the corporation subject to taxation under this act, including the right of way, roadbed, stations, cars, rolling stock, tracks, wagons, horses, office furniture, telegraph or telephone poles, wires, conduits, switch boards and all other property used in carrying on the business of said corporations or owned by them respectively, and all other real and personal property and all franchises, *said franchises not to be directly assessed* but to be taken into consideration in determining the value of the other property."

The professor's scheme rests upon the assumption that the property of a corporation has two distinct elements of value, to-wit: (1) the cost of reproduction of the physical property as affected by its present state of depreciation (2) a non-physical or intangible element which is capable of a separate appraisal.

The first element, the cost of reproduction as affected

by present depreciation, was ascertained in this case by Professor Cooley, as we have already seen.

The second element, Professor Adams finds to exist in any case where a corporation has a permanent income which exceeds the amount necessary to pay a "fair return" on the physical valuation. (R., 516, 518.)

This element of non-physical value, insofar as it applies to a railroad company, is subdivided by the professor into its elements as follows:

1. Franchise value, including
   (a) The right to be a corporation;
   (b) The right to use public property and to employ public authority for corporate ends.
2. Possession of traffic not exposed to competition.
3. Possession of traffic held by established connections.
4. Benefit of economies made possible by increased density of traffic.
5. Growth of the community, including organization and vitality of the business itself and of institutions served by it. (R., 497.)

It is true that he states that these elements attach to the physical property, and that he would not suggest that they exist separately from the physical property; but at the same time he puts a value upon them, separate and apart from the physical property, and it is submitted that, to all intents and purposes, they are treated in the professor's scheme as existing separate and apart from the physical property; and he states that, so far as the figures are concerned, the result of the application of his scheme to the valuation of the non-physical elements of the property of a railroad company will be exactly the same if we strike out every element of non-physical value except one, and that remaining one may be the franchise, which is necessarily always present. It is therefore submitted that this scheme does result in a separate valuation of the franchise, which is forbidden by the statute above quoted (R., 501). In fact he told the Industrial Commission that his plan was a rule for valuing what is commonly called the franchise. (Vol. IX., Rep. Industrial Commission.)

Second. The Adams Plan of Valuation Violates the Statute in that it Takes Into Consideration Other Elements of Value Than the Franchise.

It appears to be plain, after a reading of the statute, that it does not authorize the consideration of elements other than the physical property as affected by the franchise; but it appears from the testimony of Professor Adams that he has taken into consideration a number of other elements in arriving at a valuation of the property. If such a plan had been adopted by the State Board it would have been in violation of the law.

Benefits derived from traffic not exposed to competition, traffic held by established connections, economies made possible by increased density of traffic, and general prosperity are not franchises. These benefits arise from the sagacity of the management. Indeed, Mr. Thomas L. Green, an expert called by the defendant, frankly stated that the Adams plan of valuation would tax the brains of the manager and the muscle of the engineer. (R., 564.)

Third. The Adams Plan of Valuation Violates the Statute and the Constitution in that it Takes Into Consideration Elements Which Are Not Taken Into Consideration in the Valuation of Other Classes of Property for the Purposes of Taxation.

The Court will take judicial notice of the fact that in the assessment of other property for the purpose of taxation, the assessing officer does not take into consideration these so-called elements of non-physical value. (R., 519.)

These elements of non-physical value, as described by Professor Adams, rest upon income—surplus income over and above what he thinks is a fair return upon the physical property involved in the enterprise. The non-physical value appears with such surplus earnings, it increases with such surplus earnings, and it disappears with such surplus earnings. (R., 559, 560.)

That this element is not taken into consideration by local assessors in the valuation of property assessed by them, is known of all men, and needs no proof (R., 519). Such assessors never seek to discover the profits made in a business carried on by the use of property they are

called upon to assess. They value any particular parcel of land at the same rate per unit of measure as they value adjoining land, although the former may be in use in carrying on a very prosperous business and the latter vacant, and the buildings and machinery upon the premises used in carrying on such business the assessors assess at their value as buildings and machinery, without regard to the profits made in the business.

Take the case of two city lots lying side by side, owned by different parties, having upon them a single building, one half upon each lot, one part occupied and in use in the carrying on of a prosperous business, say a dry goods establishment, and the other half vacant. The assessors, we submit, would value such two properties at exactly the same amount. Of this there can be no doubt.

And yet it appears from the testimony of the Professor that this element of value exists in the case of other property and might be made the subject of valuation for the purposes of taxation if it could only be discovered. He says his theory of valuation is applicable wherever there is a good-will or value due to organization (R., 513); but that it would not be practicable to apply it in the case of ordinary business because there is no method by which the net earnings can be ascertained as in the case of a railroad company. There is no uniform method of accounting and no report to State officers of the balance sheets. (R., 514.)

It is certain, as we will have occasion to point out more definitely later, that the Constitution and the statute contemplate equality of valuation of property for the purposes of taxation and the term "cash value" as used in the act in question can have no other or different meaning from the same term used in the general tax law. It would not, therefore, be allowable to take into consideration in assessing property under this law, elements of value which are not taken into consideration, even though they exist, in the case of property assessed under the general tax law.

The Constitution and the statute not merely contemplate, but demand, absolute equality of taxation as between the property of corporations taxable under the amendment to the Constitution, and the other property of the State; and equality of taxation requires as well equality of valuation of the property taxed as equality of rate (Constitution of Michigan, Art. XIV., § 12; Saltonstall vs. Board of Review, 132 Mich., 196); and equality

of valuation demands that the same elements of value shall be taken into consideration.

Fourth. The Adams Plan of Valuation Violates the Statute in that it Imposes a Tax Which is Not Entirely ad valorem, but in Part, at Least, an Income Tax.

As we have seen above, this element of non-physical value appears and disappears with surplus income over and above what the Professor finds is a fair return upon the physical property invested in the enterprise. And we submit that to the extent that Professor Adams' scheme of valuation for the purpose of taxation takes into consideration this element of non-physical value based upon surplus income, it is an income tax, which is not authorized by the statute under consideration.

It is admitted by the testimony of Thomas L. Green, who was called by the defendant as an expert to support the Adams plan of valuation that the rule, as it was applied to the Michigan Central property in 1902, would impose a tax at the average rate on the cost of reproduction of the physical property, and in addition thereto, a tax of 33 cents on every dollar of the average net income in excess of a return of 3½ per cent on the cost of reproduction (R., 562).

Professor Adams says it is not an income tax, but a means of administering an *ad valorem* tax (R., 516).

He differentiates that portion of the tax which rests upon the non-physical valuation from an income tax by saying that the computation is based upon an *average* net income *for a period of years*, and that it therefore does not depend absolutely upon the income for any one year (R., 516).

We submit that this reasoning may well be characterized as absurd. Income is income, whether it be the current income for a stated period, or the average income for a stated period; and a tax levied on account of the one or the other is a tax levied on account of income, and not a tax levied upon the value of property. The fact that the tax is assessed upon income capitalized instead of upon the income directly, makes no difference. The amount of the tax is determined solely by the amount of the income.

Fifth. The Adams Plan of Valuation is not in Accord with Practical Business Experience, in that it Assumes that the Net Yield to Investors in Stocks and Bonds, at the Current Market Prices in Wall Street, Affords a Criterion of the Proper Rate to be Used in Capitalizing Net Earnings to Ascertain the Value of the Property from Which they Are Derived.

Even if we assume that this scheme of valuation is sound, and authorized by the statute, and if it be conceded for the purpose of the argument in this case that a capitalization of the net earnings of a corporation will afford some proper basis for an estimate of the true cash value of the property from which those earnings were derived, which, let it be understood, we do not concede except for the purposes of the argument, then we submit that the method by which the Professor arrives at the rate to be used in capitalization is not in accord with practical business experience.

In the first place, it should be noticed that Professor Adams claims in his testimony to have approached the problem of the proper rate to be used in capitalization as a business man would approach a proposition for the purchase or sale of a great property (R., 510).

We submit, however, in spite of his manifest determination to omit nothing from his biography having a tendency to qualify him to give testimony as an expert in this case, that there is nothing in the experience of Professor Adams, which qualifies him to approach the problem of the valuation of a railroad as a business man would approach a proposition to purchase or sell a great property. He never bought or sold a railroad. As far as the record shows, he never bought or sold any large property or had anything to do with such a transaction. He has had no experience whatever in business of any kind. His whole career has been academic, and his views and theories have never been tested by any practical experience of his own.

But, in his attempt to approach the problem as a business man would approach a proposition for the purchase or sale of a great property, he has concluded that the net yield to investors in stocks and bonds on the Wall Street market is a fair basis for the estimate of the rate that investors in railroad property are willing to receive as a net return upon their investment. In other words, the net yield to investors in bonds of the Michigan Central Railroad Company, secured by a mortgage on its physical

property, at the average market prices of those bonds for a year, in the Wall Street market, is the rate which would be a fair return to the owner of a railroad upon his investment; and that the net yield to investors in Michigan Central Railroad stock, at the average market prices in Wall Street for a year, would be the rate which would be a fair return to the owner of the Michigan Central Railroad upon the proper valuation of the franchise of the company, and the good will of its business resulting from 50 years of successful operation (R., 501, 517, 518).

We respectfully submit that such a theory is absolutely ridiculous when tested in the light of the experience of men engaged in large transactions and having large sums of money to invest in a business enterprise.

Charles F. Cox, the treasurer of the Michigan Central Railroad Company, and an officer in about 40 other railroad companies, said that the market prices of the Michigan Central stock in the year adopted by Professor Adams were no fair criterion of the intrinsic value of the stock (R., 656). If the market prices afforded no fair criterion of the market value of the stock, much less would they afford a fair basis for a computation of the value of the property of the company.

George H. Russel, the president, and for 15 years actively engaged in the management of the largest bank in the State of Michigan, said that the net yield to investors in securities of the Michigan Central at the average market prices in Wall Street for a year has nothing to do with the question of the proper rate to be used in capitalizing the net earnings of the company to determine the value of its property for the purpose of taxation (R., 690).

Ellwood T. Hance, financier, and the managing officer of the Union Trust Company of the City of Detroit, Michigan, testified to the same effect (R., 693).

Truman H. Newberry, a capitalist, connected with a large number of manufacturing corporations and with financial institutions in the City of Detroit, and having

had experience in the purchase and sale of large properties as a business man, testified to the same effect (R., 695).

H. D. Walbridge, a capitalist of the City of New York, having had experience in the purchase and reorganization of large properties, street railways, electric properties and gas properties in the State of Michigan and elsewhere, testified to the same effect (R., 698).

Thomas F. Woodlock, the editor of the Wall Street Journal, a student of markets and an adviser of investors, testified that the market prices of Michigan Central stock in the year ending August 15, 1902, which was the year adopted by Professor Adams, were no criterion whatever of the value of any considerable portion of the Michigan Central stock, and that people who expect to be taxed on their incomes in New York City and could not escape by the ordinary methods, would not hold bonds which did not yield more than 3½ per cent on the investment (R., 659).

It follows from this that the rate which Professor Adams found to be the net yield to investors in securities of the class of the Michigan Central bonds at the average market prices for the year adopted, was no fair criterion of what an investor in a railroad property would be willing to receive as a net return upon his investment.

James Marwick, an expert accountant of the City of New York, with a wide experience in the study of railroad accounts, for the purpose of determining a capitalizable value of the property, testified to the same effect (R., 649).

Professor Emory R. Johnson, having charge of the Department of Transportation and Commerce in the University of Pennsylvania, an economist, prepared, as the record shows, to testify upon this subject, by an academic experience as wide and as varied as that of Professor Adams, stated that the market quotations for the year ending August 15, 1902, did not afford a criterion by which to measure the value of all the stock of the Michigan Central Railroad; and it must follow that if it is not

a criterion by which to measure the value of all the stock, it must be much less a criterion by which to measure the value of the property of the company (R., 669).

THE APPRAISAL OF 1902.

The result of Professor Adams' work in the defense of this litigation was to very greatly increase his estimate of the value of appellant's property, as will appear by the following table:

Following is a list of the complainants, with a statement of the total valuation as found by Prof. Adams in November, 1900, and the total valuation as found by him in April, 1902 (R., 544).

	Adams' Valuation, 1900.	Adams' Valuation, 1902.
Ann Arbor	$ 6,392,388	$ 7,640,282
Chicago, Milwaukee & St. Paul	2,651,153	3,400,000
Chicago & Northwestern	15,250,362	14,750,000
Copper Range	1,151,701	2,100,000
Detroit & Mackinac	3,851,858	4,848,247
Duluth, S. Shore & Atlantic	12,449,538	13,606,288
Escanaba & Lake Superior	664,159	1,125,000
Gobebic & Montreal River	378,732	380,000
Grand Rapids & Indiana	10,544,790	12,670,715
Grand Trunk Western	8,447,130	10,312,055
C., Det. & Can. G. T. Jct.	2,579,836	2,200,000
Cincinnati, Saginaw & Mack.	1,089,748	750,000
Detroit, Gd. Haven & Milw.	6,195,171	6,195,000
Mich. Air Line Railway	1,188,089	600,000
St. Clair Tunnel	1,574,625	1,800,000
Toledo, Saginaw & Mackinaw.	1,083,104	650,000
Lake Superior & Ishpeming	1,864,940	1,400,000
L. S. & M. S. System	14,492,977	14,492,977
Manistee & Northeastern	1,650,213	1,714,900
Marquette & Southeastern	440,000	440,000
Michigan Central System	49,633,417	63,900,211
Mineral Range System	2,817,650	2,000,000
Soo Line	4,016,206	7,960,286
Munising	732,566	410,000
Pontiac, Oxford & Northern	929,320	1,488,046
Soo Bridge	530,285	530,285
Wisconsin & Michigan	358,244	325,000
Totals	$152,958,202	$177,689,292

This enormous increase is due to the changes in the method of computation; the formula used in these cases differed from that used in 1900 in the following particulars:

1. In 1900, he used the average gross earnings for a period of ten years. In 1902 he used the average gross earnings for a period of five years. The record shows that during the ten year period, there had been a steady increase in the gross earnings, and it is obvious that the adoption of the average for five years would tend to result in a higher valuation than would the average for ten years.

2. In 1900, he dealt with net earnings before the payment of taxes and allowed for the taxes by adding to the rates of annuity and capitalization a rate which he assumed represented the average rate of taxation paid upon other property in the State. In 1902, he took the net earnings after the taxes were paid, and therefore did not allow for the increased tax which the enforcement of his rule would impose.

3. In 1902, he used lower rates of capitalization. In the case of the Michigan Central, he allowed an annuity of only 3½ per cent on the physical property in place of 4½ per cent in 1900, and he capitalized the net corporate surplus at 5 per cent in 1902 instead of 6 per cent used in 1902 (R., 525).

We submit below in one column the plan of 1902 as applied in the testimony in this case to the property of the Michigan Central R. R. Co., and in a parallel column, for the purpose of comparison, a computation showing what the result would have been in this case if he had used the plan of 1900.

Plan of 1902 as applied in this case:		What the result would have been if the plan of 1900 had been used:	
1. Average gross income for the system for 5 years, 1898 to 1902, inclusive[3]	$17,818,984	1. Average gross income in Michigan for 10 years, 1893 to 1902, inclusive[3]	$ 8,864,479
2. Average operating expenses for same period[4]	14,198,607	2. Average operating expenses, including taxes for same period[3]	6,909,730
3. Average taxes for same period not computed		3. Average taxes for same period[3]	294,460
4. Average operating expenses, exclusive of taxes, not computed		4. Average operating expenses, exclusive of taxes for same period[3]	6,615,271
5. Item 2 from Item 1 leaves average net earnings for the system for the same period after taxes were paid, amounting to $3,620,377, the Michigan		5. Item 4 from Item 1 leaves average net earnings for the same period before payment of taxes[3]	2,249,208

Mileage proportion of which is[4]	2,503,345
6. Average rate of taxation on other property, not computed	
7. Annuity of 3½% on physical appraisal of 1902, of $43,151,815 + cash and current assets, $2,959,196[7] $46,111,011[7] is	1,613,885
8. Item 7 from Item 5 leaves net corporate surplus for capitalization	889,460
9. Which is 5% of[7]	17,789,200
10. Item 9 + physical appraisal, including cash and current assets, $46,111,011[7]	63,900,211
6. Average rate of taxation in 1902[2]	.0165
7. Annuity of 4% + 1.65%[5] on the physical appraisal, exclusive of cash and current assets, $43,151,815[7]	2,438,077
8. Item 7 from Item 5 leaves net corporate surplus for capitalization, which is a negative quantity	
9.	
10. Item 9 + physical appraisal, exclusive of cash and current assets	43,151,815

OBJECTIONS TO THE PLAN AS AMENDED.

We have pointed out some of the objections to the general plan invented by Professor Adams, and we have pointed out above, four particulars in which the scheme of 1902 differs from the scheme as it was described in 1900, and we submit that in every respect in which the scheme of 1902 differs from that of 1900, the scheme of 1902 is a still further departure from reason and from the law.

First. In 1900 *he took the average gross earnings for a period of ten years. In* 1902 *he took the average gross earnings for a period of five years.*

It will be seen by an examination of the table of earnings and expenses of the Michigan Central System (R., 631), which is illustrated graphically as to the Michigan Central main line by a plat appearing in the record (R., 630; Exhibit 3, March 25, 1904); that for the five-year period adopted by Professor Adams in his plan of 1902 the earnings were steadily and rapidly increasing; whereas for the ten years from 1893 to 1902 there was both prosperity and depression; and it appears from the testimony of the witnesses on the part of the complainant that the only rational plan to be made use of, if the value

(2) R., 511. (3) R., 631. (4) R., 511. (5) R., 525, 526. (6) R., 483. (7) R., 544. (9) R., 544.

of the property is to be judged by a capitalization of the net earnings, is that which will base the calculations upon a period long enough to include what some have designated as an economic cycle, or a period of depression and a period of inflation. A glance at the table or the plat will show that it was obvious to Prof. Adams, before he made a figure in his estimate of the value of the railroads for 1902, that the computation based upon the five years from 1898 to 1902 would produce a larger result than a computation based upon the period of ten years from 1893 to 1902.

George H. Russel, a witness for the complainant, referred to above, said the period averaged should be from ten to twenty years (R., 690).

Ellwood T. Hance, sworn for the complainants, referred to above, said the period averaged should be ten years (R., 693).

Truman H. Newberry, now Assistant Secretary of the Navy, sworn for complainant, referred to above, testified to the same effect (R., 695).

H. D. Walbridge testified to the same effect (R., 698).

And finally Professor Johnson called on the part of the complainants, gave it as his opinion as an economist, that the period averaged should be ten years instead of five (R., 670).

We are not unmindful of the fact that Judge Grosscup and Judge Cochran, in the two cases hereinafter cited, recognized the propriety in the cases before them of using a five-year period; but Judge Cochran expressly states that he is recommending five years as against one year, and that he does not intend to lay down any hard and fast rule, but seems to leave it to be determined by circumstances surrounding each particular case, and that in any case it is essential that it should cover a sufficient period to show a settled condition of things. (Louisv. & Nashv. R. Co. vs. Coulter, 131 Fed., 282, at p. 304.)

It also appears in this connection that while in 1900 Professor Adams took the net earnings from the company's own reports for the State of Michigan, in 1902 he

computed the net for the entire system and assigned to Michigan a mileage proportion.

It appears from the record that the Michigan Central has trackage rights over 14 miles of Illinois Central track from Kensington to Chicago, and that this 14 miles was not treated as a part of the total mileage in ascertaining the Michigan mileage proportion of the net earnings (R., 513). It is admitted by Professor Adams that this trackage right formed a very valuable part of the property of the company, and it is certain that a portion of the earnings are derived from the exercise of the right; and we submit that in any computation based upon Michigan mileage proportion that 14 miles should be treated as a part of the total mileage. This would have made a difference in our favor of some $480,000 in the valuation according to the plan of 1902.

Second. In 1900 *he dealt with net earnings before payment of taxes, and allowed for the taxes by adding to the rates of annuity and capitalization a rate which he assumed represented the average rate of taxation paid upon other property in the State. In* 1902 *he dealt with net earnings after taxes were paid, and therefore did not allow for the increased taxes which the enforcement of his rule would impose.*

The absurdity of this method of computation is made manifest by a study of a hypothetical case which was submitted to Prof. Adams in the course of his cross-examination (R., 522), where it is made plainly to appear that if we assume that we have a new railroad substantially like the Michigan Central, and assume that the gross earnings and operating expenses, aside from taxes, remained the same for a period of five years, so that we can discover the effect of Prof. Adams' method of dealing with the taxes, the valuation of the property would vary from $52,000,000 the first year to $59,740,000 the fifth year, and no two years would the valuation be the same.

The first year the valuation would be.....	$52,000,000
The second year	62,000,000
The third year	59,160,000
The fourth year	59,960,000
and the fifth year	59,740,000

Professor Adams admitted that this vacillation was due to his method of dealing with the taxes, and that if he used the plan as he outlined it in 1900 the valuation would continue the same, in the hypothetical case submitted, year after year.

On this branch of the case we are not without precedent. In the case of the Chicago Union Traction Co. vs. State Board of Equalization, 114 Fed., 561, which will be hereafter referred to, Judge Grosscup took occasion to consider the question of the method of ascertaining the value of the property of a street railroad company for the purposes of taxation by a capitalization of the net earnings, and he distinctly held that the computation should be so made as to allow for the additional taxes that the enforcement of this rule would produce. See page 567.

Prof. Johnson also testified as an economist that such an allowance should be made, and criticised the plan of Prof. Adams as used in this case in that respect (R., 670).

And the witness Walker, sworn for the defendant, added the tax rate to the rate of capitalization in his computation (R., 634).

Third and Fourth. These two objections refer to the rates of annuity and capitalization, as to both of which Professor Adams adopted a lower rate in 1902 *than he did in* 1900.

We have seen above that he gets at the rates by reference to the stock and bond market, and that according to the testimony of our witnesses the stock and bond market has nothing to do with the question. And we have called several witnesses who have had experience as business men in the estimate of the value of large properties, and asked them to assume that the value of the taxable property of a railroad company is to be arrived at by a capitalization of the net earnings of the company, and to state what, in their opinion, the proper rate to be used in capitalization would be.

Mr. Russel testified that it should be 6 per cent (R., 690).

Mr. Hance said it should be 8 per cent (R., 693).

Mr. Walbridge agreed with Mr. Hance (R., 698).

Mr. Newberry said it should be 10 per cent (R., 695).

A reading of the testimony of these witnesses will show their reasons for their conclusions, and we submit that they are rational, practical and conclusive.

As to the rate of capitalization also, it should be noted that Judge Grosscup, in the case above referred to, used 6 per cent, and Judge Cochran, in the United States Circuit Court for the District of Kentucky, in disposing of the case of Louisville & Nashville R. Co. vs. Coulter, 131 Fed., 282, used 6 per cent as the rate of capitalization. See page 303.

See also Spring Valley Water Works vs. City of San Francisco, 124 Fed., 574, at 598.

And even Professor Johnson, the economist, who approved the use of two rates of capitalization, one for the physical property and the other for the non-physical, said in the case of the Michigan Central the rates should be 4½ and 6, plus the tax rate in each case, instead of 3½ and 5, without adding any tax rate (R., 670).

PROFESSOR JOHNSON'S COMPUTATION.

Another very serious objection to the determination of the value of the taxable property of a railroad corporation by reference to the net earnings for a single year or for any period of years, is found in the fact that there is a great diversity in the methods of bookkeeping employed by different railroad companies.

The Interstate Commerce Commission, for the purpose of bringing about as far as possible a uniformity in the methods of bookkeeping by the railroads of the country, has prepared a schedule showing the details of the operating expense account of a railroad corporation, and prescribing what classes of expenditures should be charged to construction and paid for out of capital. The classification is designed to include in operating expenses not only the cost of current repairs, but the cost of new property to replace old property worn out or destroyed by accident (R., 507). In other words, a company is en-

titled to deduct from its gross earnings before reporting any net earnings a sum of money sufficient to operate the road and at the same time to maintain it against depreciation.

But competent railroad managers differ in their interpretation of the word "maintenance" (R., 507). Some say it means the keeping of the property up to the requirements of technical engineering development, which is something beyond the meaning given to the word by the classification of the Interstate Commerce Commission.

For example, if the development of the equipment used by a railroad company requires the substitution of a steel truss bridge for a wooden bridge, the Interstate Commerce Commission classification of operating expenses would require that the cost of the new steel truss bridge should be treated as an additional investment of capital. But experience has shown that the development of railroad equipment in weight and capacity has been so rapid that while the steel truss bridge has yet perhaps 75 per cent of its wearing value remaining, it becomes necessary to lay aside the steel truss bridge and substitute for it a steel girder deck bridge; and it has therefore been demonstrated that prudent accounting requires that there should be charged to operating expenses and taken out of current earnings before any net is reported, not only a sum of money sufficient to maintain the property against depreciation, but to keep it abreast of technical development.

This subject is elaborated somewhat in the testimony in this case by Mr. Cox (R., 654) and by Prof. Johnson (R., 607). And the rates of capitalization testified to by Messrs. Russel, Hance, Walbridge and Newberry, hereinbefore referred to, are based upon the hypothesis that there has been charged to the operating expenses of the railroad company in question a sum sufficient not only to maintain the property against depreciation, but to keep it abreast of technical development.

It is obvious, therefore, that until the method of bookkeeping employed in a given case is known, it is not possible to arrive at a rational conclusion by any capitalization of net earnings; for if the company sees fit to charge to new construction and pay for out of capital many expenditures which should by the classification prescribed by the Interstate Commerce Commission, clearly be charged to operating expenses, and thus swell the net earnings on the books, it is plain that a dollar of net earnings as shown by the books is by no means the same guide to the value of the property involved as would be a dollar of the net earnings shown on the books of the

Michigan Central, where there had been charged to operating expenses not only all proper expenses for maintenance, but also many so-called permanent improvements.

It appeared in this case that the Michigan Central for many years has charged to operating expenses a large number of items which, in the opinion of Professor Johnson, who admits that it is proper to charge to operating expenses enough to keep the property abreast of technical development, were in fact permanent improvements, and ought to have been treated as a new investment of capital in determining the extent to which the net earnings shown by the books would be a guide to the value of the property. But, fortunately, the Michigan Central had preserved an itemized statement of all the so-called permanent improvements during the period of ten years involved, which had been paid for out of earnings, and charged to operating expenses (R., 680). This statement of betterments or permanent improvements, so-called, which had been paid out of earnings, was submitted to Professor Johnson so that he might add to the statement of the net earnings as shown by the books all sums of money which he thought ought not to have been paid out of the net earnings or might properly have been treated as an additional investment of capital. In other words, he was provided with the data by which he might normalize the net earnings of the Michigan Central Company, and requested to do so; and his computation of the true value of the property for the purposes of taxation is based upon the net earnings thus normalized (R., 670).

And whereas, Professor Adams fixes a valuation in 1902 of some $64,000,000, Professor Johnson finds that the fair application of even such a plan of valuation for the purposes of taxation would produce only $46,000,000, which is only $1,000,000 more than it was assessed at by the State Board (R., 671). Prof. Adams practically admits the propriety of Prof. Johnson's rates of annuity and capitalization (R., 816).

While we do not concede for the purposes of this case that it is ever proper to ascertain the value of the taxable property of a railroad company by any such method as that used by Professor Adams, and while, in calling Professor Johnson, we expressly protested against such a method of valuation, yet we submit that the testimony of Professor Johnson shows that, after a reasonable appli-

cation of even such a method, the valuation fixed by the State Board appearing upon the assessment roll in this case as to the property of the Michigan Central cannot be criticised.

So much for the Adams plan of valuation, which we submit is absolutely unworthy the further serious consideration of this Court, as it has been attempted to apply it in this case. If the formula which he promulgated in 1900 was correct, what happened in 18 months to change it? What new principle of philosophy was evolved? What scientific discovery was made which rendered the taxable property of the Michigan Central Railroad Company more valuable to the extent of $20,000,000 than it would have been if the computation had been made by the plan outlined in 1900?

If it was right in 1900 to ascertain the net earnings of a corporation by taking an average of its operations for ten years, so as to include a period of depression as well as a period of prosperity, it was wrong in 1902 to take an average of only five years, and that five years on the crest of the highest wave of prosperity that the business interests of the country have ever seen.

If it was right in 1900 to deal with net earnings before payment of taxes, and allow for the increase of taxes imposed by the enforcement of this rule of valuation by increasing the rates for the annuity and capitalization, it was wrong in 1902 to take the net earnings after the payment of taxes and make no allowance for the increase of taxes thus imposed.

If it was right in 1900 to allow an annuity of 4½ per cent and to capitalize the net corporate surplus at 6 per cent, it was wrong in 1902 to allow an annuity of only 3½ per cent and to capitalize the net corporate surplus at only 5 per cent.

And there is no pretense of an explanation in the record by any witness sworn on the part of the defendant, of these marvelous changes, every one of which operates to increase the result reached by the computation.

An attempt was made to corroborate the testimony of Professor Adams by a computation according to what was spoken of as the "stock and bond plan." The stock and

bonds of a corporation are not a measure of the value of taxable property.

San Francisco National Bank vs. Dodge (decided by this Court, February 27, 1905).

III.

OUR RIGHT TO RELIEF BASED UPON THE CONSTITUTION OF THE STATE.

If the Court reaches the conclusion that the property of the appellants has been assessed at its true cash value, and that the other property, by reference to which the average rate is to be determined, has been intentionally and generally assessed at something less than its true cash value, it will be no answer to our claim for relief to say that the Constitution of Michigan and the statute in question, as construed by the tax officers of the State, have established two classes of property for the purposes of valuation, including in one class the property of the corporations affected by Act 173, and in the other class all other property upon which ad valorem taxes are assessed for the purposes mentioned in the Act, and that a different rule of valuation may be permitted in the different classes.

This will be no answer because the Constitution of Michigan does not permit classification of property for the purpose of valuation for taxation. As far as the valuation of property for the purposes of taxation is concerned, there is but one class. All assessments must be at cash value. Art. XIV., Sec. 12, provides that "all assessments hereafter authorized shall be on property at its cash value." (Appendix "B.") The Constitution provides for a uniform rule of taxation, and there has been no invasion of that rule by the amendment of 1900, except to authorize the average rate. With respect to the valuation, the uniform rule is preserved.

Under the requirement that all assessments shall be at cash value according to a uniform rule, the Supreme Court of Michigan has held that there can be but one rule of valuation.

Saltonstall vs. Board of Review of Cheboygan, 132 *Mich.*, 196.

The tax sought to be imposed by the Act in question is a property tax, and is governed by the constitutional provision quoted.

Pingree vs. The Auditor General, 120 *Mich.*, 95.

IV.

OUR RIGHT TO RELIEF BASED UPON EQUITABLE PRINCIPLES AND JUDICIAL CONSTRUCTION OF THE CONSTITUTION OF THE UNITED STATES.

It is well settled that if there has been, with respect to a class of property, systematic, intentional, and unlawful undervaluation, a taxpayer whose property is not thus undervalued is entitled to relief in equity.

Taylor vs. Louisv. & Nashv., 88 *Fed.*, 350.
Louisv. Trust Co. vs. Stone, 107 *Fed.*, 305.
Louisv. & Nashv. vs. Coulter, 131 *Fed.*, 282, 310.
Cummins vs. Bank, 101 *U. S.*, 153.
Stanley vs. Supervisors, 121 *U. S.*, 550.

In the Taylor case (p. 373) Judge Taft said:

> "Equity will not relieve against an assessment merely because it happens to be at a higher rate than that of other property; that such inequalities, due to mistake, to the fallibility of human judgment, or to other accidental causes, must be borne, for the reason that absolute uniformity cannot be obtained; * * * in other words, what may be called 'sporadic cases of discrimination' cannot be remedied by the chancellor. He can only interfere when it is made clear that there is, with respect to certain species of property, systematic, intentional, and unlawful undervaluations for taxation by the taxing officers, which necessarily effect an unjust discrimination against the species of property of which the complainant is an owner. The reason for this distinction is obvious. The occasional and accidental discriminations are inevitable to every assessment, and are not likely to continue, because not the result of an illegal purpose on the part of anyone. If equitable interference

in such cases could be invoked, the obstruction to the collection of taxes would be so frequent as to be intolerable. More than this, an action to enjoin a tax is a collateral attack upon the judgment of a quasi-judical tribunal; and it cannot be justified except on the ground of an obvious violation of law, or something equivalent to fraud. It does not lie where the injury complained of arises only from the erroneous, but honest, judgment of the lawfully constituted tax tribunal. The interference by the chancellor in the case at bar and in the Cummings case, rests on something equivalent to fraud in the tribunal imposing the tax. The various boards whose united action is by law intended to effect a uniform assessment on all classes of property are to be regarded as one tribunal, and the whole assessment on all classes of property is to be regarded as one judgment. If any board which is an essential part of the taxing system intentionally, and therefore fraudulently, violates the law, by uniformly undervaluing certain classes of property, the assessment by other boards of other classes of property at the full value, though a literal compliance with the law, makes the whole assessment, considered as one judgment, a fraud upon the fully assessed property. And this is true although the particular board assessing the complainant's property may have been wholly free from fault or intentional discrimination."

In the Stone case (p. 305) Judge Day said:

"It may be conceded that, if the allegations of the bill are made out, there exists in respect to the property of complainant, and others similarly situated, a systematic, intentional, and illegal undervaluation of other property by the taxing officers of the State, which necessarily affects an unjust discrimination against the property of which the plaintiff is the owner, and a bill in equity will lie to restrain such illegal discrimination, and that in such cases federal jurisdiction will arise because of the equal protection of the laws guaranteed by the Fourteenth Amendment."

Such was assumed to be the law in Coulter vs. Louisville & Nashville, decided by this Court during the October term of 1904.

Upon this record we submit all the appellants are entitled to have their taxes reduced to 82.7 per cent of the amount charged upon the roll in question.

Respectfully submitted,

O. E. BUTTERFIELD,

Solicitor for Appellant the Michigan Central R. Co. and of Counsel for the Other Appellants.

HENRY RUSSEL,
ASHLEY POND,
LLOYD W. BOWERS,
BENTON HANCHETT,
Also of Counsel.

APPENDIX "A."

Act No. 173 (1901).

AN ACT to provide for the assessment of the property of railroad companies, union stations and depot companies, express companies, car loaning companies, stock car companies, refrigerator car companies, and fast freight line companies; and for the levy of taxes thereon by a State Board of Assessors, and for the collection of such taxes.

The People of the State of Michigan enact:

Section 1. That the Board of State Tax Commissioners created under the laws of this State, shall ex-officio constitute a State Board of Assessors, one of whom shall be elected chairman of said board.

Sec. 2. The secretary of the Board of State Tax Commissioners shall be ex-officio secretary of the State Board of Assessors without extra compensation, and shall keep a record of all its proceedings in addition to such other duties as may be required of him by said board, and shall devote his whole time to the duties of his office. In addition to the secretary said board may employ such other clerical assistance as may be necessary and required to perform the duties imposed upon it by this act: *Provided,* That the compensation paid for such clerical assistance shall not in any case exceed one thousand dollars for each person employed per annum: *Provided further,* That

said board may employ such other assistance as may be necessary, with the consent of the Governor and the Board of State Auditors. The compensation of the said secretary and clerks, and all other necessary expenses incurred in carrying out the provisions of this act shall be allowed by the Board of State Auditors upon proper vouchers approved by the chairman and secretary of the board, and paid by the State Treasurer out of the general fund.

Sec. 3. Said board shall have access to all books, papers, documents, statements and accounts, on file or of record in any of the Departments of State, subject to the rules and regulations of the respective departments relative to the care of public records. It shall have like access to all books, papers, documents, statements and accounts, on file or of record in counties, townships and municipalities. It shall have the right to subpoena witnesses, upon a subpoena signed by the chairman of said board and attested by the secretary thereof, delivered to such witnesses, which subpoenas may be served by any person authorized to serve subpoenas from courts of record in this State, and the attendance of witnesses may be compelled by attachment, to be issued by any Circuit Court in this State, upon proper showing that such witness has been properly subpoenaed, and has refused to obey such subpoena. The person appearing in response to such subpoena shall receive like compensation as is allowed by the statutes of this State to witnesses in the Circuit Court, to be allowed by the Board of State Auditors upon the presentation of a copy of such subpoena, with the number of days' service and mileage endorsed thereon and approved by a member of said Board of Assessors, or the secretary thereof. The person serving such subpoena shall receive the same compensation now allowed to sheriffs or other officers for serving subpoenas. Said board shall have power to examine witnesses under oath, said oath to be administered by any member of the board, or by the secretary thereof. It shall have the right to inspect and examine the books, papers or accounts of any corporation, firm or individual owning property to be assessed by said board, and if such corporation, firm or individual refuse to permit said inspection and examination, or neglect or fail to appear before said board in response to its subpoena, said corporation, firm or individual shall, for each such refusal, neglect or failure, forfeit the sum of five hundred dollars to the State, the sum so forfeited to be recovered in a proper action

brought in the name of the people of the State of Michigan, in any court of competent jurisdiction.

Sec. 4. It shall be the duty of said board to make an annual assessment upon an assessment roll to be prepared by said board, of the property having a situs in this State as hereinafter defined, of railroad companies, union station and depot companies, express companies doing business within this State, car loaning companies, and refrigerator and fast freight line companies, and all other corporations owning, leasing, running or operating any freight, stock, refrigerator or any other cars, not being exclusively the property of any railroad company paying taxes upon its rolling stock under the provisions of this act, over or upon the line or lines of any railroad or railroads in this State.

Sec. 5. The term property as used in this act shall be deemed to include all property, real or personal, belonging to the corporation subject to taxation under this act, including the right of way, roadbed, stations, cars, rolling stock, tracks, wagons, horses, office furniture, telegraph or telephone poles, wires, conduits, switchboards, and all other property used in carrying on the business of said corporations or owned by them respectively, and all other real and personal property and all franchises, said franchises not to be directly assessed, but to be taken into consideration in determining the value of the other property: *Provided, however,* That this definition shall not include, apply to or subject to taxation such real estate as is owned and can be conveyed by such corporations under the laws of this State which is not actually occupied in the exercise of their franchises or in use in the proper operation of their roads or their corporate business; but such real estate so excepted shall be liable to taxation in the same manner and for the same purposes and to the same extent and subject to the same conditions and limitations as to the collection and return of taxes thereon, as is other real estate in the several townships or municipalities in which the same may be situate. The term company, corporation or association, wherever used in this act, shall apply to and be construed as referring respectively to any railroad company, union station and depot company, express company, car loaning company or refrigerator or fast freight line company, and any and all other corporations subject to taxation under this act. The term "property having a situs in this State" shall include all the property, real and personal, of the cor-

porations enumerated in this act, owned used and occupied by them within the limits of this State, and also such proportion of the rolling stock, cars and other property of such corporations as is used partly within and partly without this State, as herein provided to be determined.

Sec. 6. The several corporations enumerated in this act, doing business in this State, shall annually, between the first and thirtieth days of June, in each year, under the oath of the president, secretary, treasurer, superintendent or chief officer of such company, make and file with the State Board of Assessors in such form as said Board may provide, upon blanks to be furnished by said Board, a statement containing the following facts:

RAILROAD, UNION STATION AND DEPOT COMPANIES.

The blanks furnished to railroad and union station and depot companies shall provide for the following information:

First: The name of the company;

Second: The nature of the company, and under the laws of what State or country organized;

Third: The location of its principal office;

Fourth: The name and postoffice address of the president, secretary, auditor, treasurer and superintendent or general manager;

Fifth: The name and postoffice address of the chief officer or managing agent of the company in Michigan;

Sixth: The number of shares of capital stock;

Seventh: The par value and market value, or if there be no market value, the actual value, of the shares of stock on the second Monday of April of the year in which the report is made;

Eighth: A detailed statement of the real estate owned by the company in Michigan, and where situate, and the value thereof;

Ninth: A detailed statement of the personal property, including moneys and credit owned by the company in Michigan, on the second Monday in April in the year in which the report is made, where situate, and the value thereof;

Tenth: The total value of the real estate owned by the company situate outside of Michigan;

Eleven: The total value of the personal property of the company situate outside of Michigan;

Twelfth: The whole length of their lines, and the length of so much of their lines as is within or is without Michigan, which lines shall include what said railroad companies control and use as owners, lessees, or otherwise;

Thirteenth: A statement of the entire gross receipts of the companies from whatever source derived, for the year ending the second Monday of April in the year for which the report is made;

Fourteenth: Such other facts and information as said Board may require, in the form of the returns prescribed by it.

Express Companies.

The blanks furnished to express companies shall provide for the following information:

First: The name of the company;

Second: The nature of the company, and under the laws of what state or country organized;

Third: The location of its principal office;

Fourth: The name and postoffice address of the president, secretary, auditor, treasurer and superintendent or general manager;

Fifth: The name and postoffice address of the chief officer or managing agent of the company in the State of Michigan;

Sixth: The number of shares of capital stock, (a) authorized, (b) issued;

Seventh: The par value and market value, or if there be no market value, the actual value of the shares of stock, together with the total amount of bonded indebtedness, on the second Monday of April of the year for which the report is made;

Eighth: The situation, income and value in detail of its real estate in this State;

Ninth: The total income from and cash value of all its real estate situated outside of this State;

Tenth: A full and correct inventory at the true cash value, of its personal property, including moneys and credits, within this State;

Eleventh: The true cash value of all its personal property, including money and credits, without this State;

Twelfth: The whole length and names of railroad lines and water and stage routes over which it did business,

and separately, in detail, the portions of such lines and routes within this State, and the portion of such routes over navigable waters of the United States within this State;

Thirteenth: Such other facts and information as may be deemed necessary by the State Board of Assessors, or any member thereof, to the proper assessment of the property of such comapny.

CAR LOANING, STOCK CAR, REFRIGERATOR AND FAST FREIGHT LINE COMPANIES, AND OTHER CAR COMPANIES.

The blanks furnished to car loaning, stock car, refrigerator and fast freight line companies shall provide for the following information:

First: The corporate name of the company;

Second: The nature of the business of said company, and under the laws of what state or country organized;

Third: The location of its principal office;

Fourth: The name and postoffice address of the president, secretary, auditor, treasurer and superintendent or general manager;

Fifth: The location of its principal office in the State of Michigan, together with the name and address of the chief officer or managing agent of the company in Michigan;

Sixth: The total number of cars and rolling stock of any such corporation run over or operated upon any line or lines of railroad within this State each day during the entire year preceding the date of making and filing such report;

Seventh: The cost of construction of each of said cars;

Eighth: The length of time the same has been in service;

Ninth: The cash value of each of said cars so operated and run in this State, at the time of making and filing such report;

Tenth: And such other and additional information as may be deemed necessary by said Board, or any member thereof, to the proper assessment of the cars of such company in accordance with the provisions of this act and to the porformance of the duties imposed upon it hereby.

Sec. 7. Blanks for making these statements provided for in Section Six shall be furnished to such companies

on making application to said Board: *Provided,* That the reports hereby provided for shall not in any way relieve any of said companies from making the reports now required to be made to other State officers. In case any company fails or refuses to make the statement required by this act, or refuses to furnish any information requested, the Board shall inform itself as best it may on the matters necessary to be known in order to discharge its duties with respect to the assessment of the property of such company. Any company which shall refuse or neglect to make the report required by this act within the time specified, shall be subject to a penalty of five hundred dollars for each day of the continuance of such neglect or refusal to file said report, to be recovered in a proper action brought in the name of the people of the State of Michigan in any court of competent jurisdiction.

Sec. 8. Subsequent to the filing of the reports required in the preceding section, and prior to the fifteenth day of Decmeber in each year, it shall be the duty of the said State Board of Assessors, to prepare an assessment roll as provided in Section Four of this act, upon which they shall assess at the true cash value on the second Monday of April of the year in which the assessment is made all the property of the companies herein enumerated subject to taxation under this act, which said assessments shall not be final until reviewed as hereinafter provided. For the purpose of arriving at the amount and character and the true cash value of the property belonging to said companies as appearing upon the assessment roll for the purpose of assessment and taxation, the said Board may personally inspect the property belonging to said companies, and may take into consideration the reports filed under this act, the reports and returns of such companies filed in the office of any officer of this State, and such other evidence as may be obtainable bearing thereon. In determining the true cash value of the property of railroad and union station and depot companies which own, lease or operate lines partly within and partly without this State, the said Board shall be guided, in ascertaining the property subject to taxation in Michigan, by the relation which the number of miles of main track within the State of Michigan bears to the entire mileage of the main track of said companies both within and without this State. In determining the cash value of the property of express companies, they shall ascertain and determine the actual value in money of the entire amount of the capital stock and bonded indebted-

ness of such express company. From the amount so obtained, and determined, said Board shall deduct the actual value of all real estate owned by it as ascertained by said Board, and the actual value of all its personal property which is not used in the express business of such express company. And the remainder thus obtained shall be used in determining the assessment of such express company in the following manner: the said Board shall then divide the amount as obtained above by the total number of miles of railroad, stage, water and other routes over which the company did business, to obtain the value per mile, and shall then multiply the value per mile thus obtained by the total number of miles of such routes within this State, exclusive, however, of the number of miles of water routes over the navigable waters of the United States within this State, to which result shall be added the value of all real estate owned by such express company in this State as determined by said Board, and the sum so obtained shall be taken and considered as the actual value of the property of such express company subject to assessment and taxation in this State. In ascertaining the cash value of the property of car loaning, stock car, refriegrator, fast freight line and other car companies subject to taxation under this act, they shall ascertain the average number of cars used in this State during the year preceding the date of the filing of the report mentioned in the preceding section, such average to be determined by dividing the total number of cars so used or operated within this State during said year by the total number of days on which said cars were so used or operated within this State; and they shall also ascertain the average cash value of such average number of cars, and from said data the total valuation shall be determined and shall be the assessment against the property of said corporation.

Sec. 9. Upon said assessment roll, after the names of each of the companies assessed thereon, shall be placed a general description of the properties of said companies, which shall be deemed to include all of the properties of said companies liable to taxation under this act. In the case of railroad, union station and depot companies, such general description may be as follows: "Real estate, rolling stock, right of way and appurtenances thereto, and all other property used in carrying on the corporate business and subject to taxation by a state board of assessors." In the case of car loaning, stock car, refrigerator and fast freight line and other car companies, the fol-

lowing general description may be used: "Cars subject to taxation by a state board of assessors." In the case of express companies, the following general description may be used: "Property subject to taxation by a state board of assessors." In an appropriate column opposite the names of said corporations shall be extended the cash valuations of the properties of said companies so assessed.

Sec. 10. On the third Monday of December in each year, it shall be the duty of the State Board of Assessors to meet at the State Capitol at Lansing, and to continue in session from day to day for so long a period as may be necessary, not later than the fifteenth day of January next thereafter, for the purpose of reviewing said assessment roll, and any company or person interested shall have the right to appear during said period and be heard as to the valuation of the property of any company, and said State Board of Assessors may, on such application or on its own motion, correct the assessment or valuation of the property of such company in such manner as will, in its judgment, make the valuation thereof just and equal; and for the purpose of arriving at the true cash value of the properties assessed on said assessment roll, may subpoena witnesses as provided in Section Three of this act and have such hearing as may be deemed necessary. In case it shall appear or be made to appear to the members of said Board, acting in review for assessment purposes, that the property of any corporation subject to taxation under the provisions of this act shall have been omitted from said assessment roll, it shall place the same thereon and make the assessment thereof as required in Sections Eight and Nine of this act: *Provided*, That any such assessment shall take place in time to allow five full days for the review of the same before the expiration of the time herein provided for the completion of the review. After said State Board of Assessors shall have completed the review of said rolls as herein provided, they shall place opposite each description of property in said roll, in a column provided for that purpose, the true cash value of the same as ascertained and determined by them, and such valuation so fixed by them shall be the final valuation upon which the tax upon said property shall be levied and spread as herein provided. After said board shall have completed the review of said roll, a majority thereof shall certify under their hands officially, and spread on said roll, a certificate to the effect that the same has been acted upon and reviewed in accordance with law, which certificate shall state all the alterations,

changes, corrections and additions made in or to the assessment or valuation of the property appearing on said roll.

Sec. 11. It shall be the duty of the county clerk in each county in this State, as soon as possible after the equalization of the board of supervisors of his county of the assessment rolls of the several municipalities therein, and not later than the first day of November in each year, to make a report, duly certified, to the State Board of Assessors, of the record of such equalization and of the record required to be made under section thirty-seven of the general tax law, being section three thousand eight hundred sixty of the compiled laws of eighteen hundred ninety-seven, as appears upon the records of such board of supervisors, which report shall, among other things, contain a statement of the amount of ad valorem taxes to be raised in the several municipalities of such county for State, county, municipal, township, school, and other purposes, and a statement of the aggregate valuation of the property in each of said several municipalities as taken from the assessment rolls of said municipalities for the year in which such equalization is made. It shall be the duty of the supervisor or other assessing officer of cities and villages in this State governed by special charters, which provide for the collection of ad valorem taxes, which are not reported to the board of supervisors for the purposes of equalization or review, and the supervisors or other assessing officers of cities organized under general laws, to make, within the time above limited, a properly certified report to the State Board of Assessors of all ad valorem taxes raised in any of said municipalities which have not been reported to the board of supervisors for the purposes of equalization and review. In case any county clerk or any supervisor or assessing officer shall neglect or fail to make the report by this section required, within the time limited, the said State Board of Assessors shall inspect and examine, or cause an inspection and examination of the records of said board of supervisors, or in cities affected by this section, an examination of the records of the proper officer, for the purpose of procuring the information required for the purpose of arriving at the average rate of taxation in this State; and the said board, in addition thereto, may require such reports on blanks which it shall prepare and furnish therefor, from all county, State and municipal officers, as it shall deem necessary to the accomplishment of the purpose of this act. Any county clerk, supervisor

or assessing officer who shall fail to make the report required by this section shall be subject to a penalty of one hundred dollars, to be recovered in a proper action in the name of the people of the State of Michigan, in any court of competent jurisdiction.

Sec. 12. As soon as the reports required by the preceding section to be filed have been filed, or the information therein required to be procured shall have been procured, and not later than the fifteenth day of December in each year, the said State Board of Assessors shall ascertain and determine the average rate of taxation for the then current year levied upon other property upon which ad valorem taxes are assessed for State, county, township, school and municipal purposes, and shall enter the same upon its records forthwith, together with the method by which such average rate was ascertained and determined.

Sec. 13. Said Board shall tax the property of the several companies as assessed by it at the rate as determined by it, and the amount of tax to be paid by each of said companies shall be extended upon said assessment roll opposite the descriptions of their respective properties. After the completion of said tax roll, and prior to the first day of February in each year, the said board shall attach thereto a certificate signed by the members of the board, or a majority thereof, which shall be as follows: "We do hereby certify that we have set down in the above assessment roll all the property of railroad companies, express companies, union station and depot companies, car loaning, stock car, refrigerator and fast freight line and other car companies liable to be taxed in this State, according to our best information, and that we have estimated the same at what we believe to be the true cash value thereof, and that we have assessed the taxes thereon at the average rate of taxes for State, county, township, school, municipal and other purposes, levied through the State during the present year, as determined by us. The said tax roll shall thereupon be forthwith delivered to the Auditor General, who shall immediately notify by registered mail the several companies taxed thereon to pay the taxes extended thereon to the State Treasurer. The said taxes shall be payable on the first day of March following the assessment and levy thereof, and shall be in lieu of all taxes for State and local purposes, not including special assessments on property particularly benefited,

made in any county, city, village or township. All taxes not paid before the first day of April in the year in which the same are payable shall bear interest at the rate of one per cent per month thereafter. The taxes so extended against said companies shall become forthwith a debt due from each of said companies to the State, and shall constitute a lien upon all the property of said companies, real, personal and mixed, from the time of the extension until the payment thereof, which lien shall take precedence of all demands, judgments, assignments, by warranty deed or otherwise, or decrees against said companies, which lien and debt may be enforced by seizure or sale of said property or such portion thereof as may be necessary to satisfy the same, as hereinbefore provided. The State Board of Assessors shall, upon the completion of said roll and the correction hereinbefore provided for, annex to said roll a warrant, signed by the State Board, or a majority of them, commanding the Auditor General to collect the several sums mentioned in the last column of such roll, and being the sum for which the said company was assessed and was liable to pay for a tax upon its property under the provisions of this act for the purposes provided for in this act; and the said warrant shall authorize and command the Auditor General, in case any corporation named in the assessment roll shall neglect or refuse to pay its tax, to levy the same by distress and sale of the properties of said corporation,. or such portion thereof as shall be necessary to raise sufficient money to satisfy said tax and the expense of said sale, after giving the same notice of such sale as provided for in the general laws of this State for the sale of property seized for taxes and offered for sale: *Provided*, He may bring an action in the name of the people of the State of Michigan in any court of competent jurisdiction in the State of Michigan, or in any other State, for the enforcement of said lien, and upon recovery of judgment or decree therein the same may be collected by execution, levy and sale, as in other cases, upon judgments in courts of record.

Sec. 14. If any court of competent jurisdiction shall adjudge that any tax levied under the provisions of this act is illegal on account of any irregularity or informality in the determination of the average rate of taxation required to be ascertained and determined by said State Board of Assessors, or for the reason that such average rate has not been ascertained and determined according to law, it shall be the duty of the said State Board of Assessors, whether any part of the taxes assessed and

levied have been paid or not, to redetermine and reascertain the average rate of taxation throughout the State in accordance with law, and when such redetermination and reascertainment has been made, to make a duplicate of the original assessment roll and to extend the taxes thereon according to such redetermined and reascertained average rate, and when such duplicate roll has been made and the taxes extended thereon in the manner provided in this section, it shall be of the same force and effect as an original assessment made in accordance with law. All proceedings on the redetermination and reascertainment of such average rate and for the extension and collection of taxes upon said duplicate assessment roll shall be conducted in the method originally provided for, so far as may be. Whenever any sum or part thereof levied upon any property subject to taxation under this act so set aside has been paid and not refunded, the payment so made shall be applied upon the reassessment upon said property, and the reassessment to that extent shall be deemed to be satisfied.

Sec. 15. No tax assessed upon any property and no average rate determined by said State Board of Assessors as hereinbefore required, shall be held invalid by any court of this State on account of any irregularity in any assessment or on account of any assessment or tax roll not having been made or proceeding had within the time required by law, or on account of the property having been assessed without the name of the owner, or in the name of any corporation or person other than the owner, or on account of any other irregularity, informality or omission, if the method and manner of ascertaining and determining the average rate of taxation on property in this State is in accordance with the constitution and statutes of this State.

Sec. 16. All taxes collected under this act shall be applied in paying the interest upon the primary school, university and other educational funds, and the interest and principal of the State debt, in the order herein recited, until the extinguishment of the State debt other than the amounts due to educational funds, when such taxes shall be added to and constitute a part of the primary school interest fund; and such taxes as are collected under the provisions of this act shall be treated and disbursed as specific taxes are now treated and disbursed: *Provided, however,* That if any of the corporations, com-

panies or associations herein named were not paying specific taxes to this State on November sixth, A. D. nineteen hundred, the tax collected from such corporations, companies or associations under this act shall be paid into and become a part of the general fund of the State.

Sec. 17. The first assessment under this act shall be made as herein required in the year nineteen hundred and two. Nothing herein contained shall be deemed a waiver or affect the collection of the specific taxes required to be paid by the companies hereby affected, on the first day of July, in the year nineteen hundred and one, and on the first day of July in the year nineteen hundred and two, under the general laws, upon the property or business of such companies operated within this State. The existing laws providing for the collection of such specific taxes shall be continued in force until the collection and payment of all taxes levied thereunder for the year nineteen hundred and one and previous years.

Sec. 18. If said board shall wilfully assess any property at more or less than what the members taking part in making such assessment believe to be its true cash value, the members voting in favor of such assessment shall be guilty of a misdemeanor, and on conviction thereof shall be punished by imprisonment in the county jail not exceeding one year, or by a fine not exceeding five thousand dollars each.

Sec. 19. If any person, company, association or corporation whose property is subject to assessment under this act shall directly or indirectly promise, offer or give to any member of said board, during his term of office, or to any other person at his request, any gratuity of any kind whatever, such person or corporation shall forfeit to the State the sum of ten thousand dollars for each such offense, to be recovered in an action in the name of the people of the State of Michigan, in any court of competent jurisdiction. And the recovery of such fine under this act shall not constitute a bar to any prosecution of the person or corporation so offending under the criminal laws of this State.

Sec. 20. All other acts or parts of acts, whether contained in any acts for the incorporation of railroad companies, union station and depot companies, express companies, cor loaning companies, stock car companies, refrigerator car companies, and fast freight line com-

panies, or in any other law of this State, so far as such acts or parts of acts are inconsistent with this act, and no further, are hereby repealed except as herein expressly stated: *Provided, however,* That all rights which the State has now under any of said acts, for taxes or penalties, shall not in any way be affected by this act, and shall not constitute a bar to any prosecution or recovery on account of such taxes or penalties.

Approved May 27, 1901.

APPENDIX "B."

CONSTITUTION OF MICHIGAN, ARTICLE XIV.

Section 10. The State may continue to collect all specific taxes accruing to the treasury under existing laws. The Legislature may provide for the collection of specific taxes from corporations. The Legislature may provide for the assessment of the property of corporations, at its true cash value, by a State Board of Assessors and for the levying and collection of taxes thereon. All taxes hereafter levied on the property of such classes of corporations as are paying specific taxes under laws in force on November sixth, A. D. nineteen hundred, shall be applied as provided for specific State taxes in section one of this article.

Sec. 11. The Legislature shall provide a uniform rule of taxation except on property paying specific taxes, and taxes shall be levied on such property as shall be prescribed by law: *Provided,* That the Legislature shall provide an uniform rule of taxation for such property as shall be assessed by a State Board of Assessors, and the rate of taxation on such property shall be the rate which the State Board of Assessors shall ascertain and determine is the average rate levied upon other property upon which ad valorem taxes are assessed for State, county, township, school and municipal purposes.

Sec. 12. All assessments hereafter authorized shall be on property at its cash value.

Sec. 13. In the year one thousand nine hundred and one, and every fifth year thereafter, and at such other times as the legislature may direct, the legislature shall provide for an equalization of assessments by a State board, on all taxable property, except that taxed under laws passed pursuant to section ten of this article.

APPENDIX "C."

Sec. 3857 of the Compiled Laws of 1897 reads as follows:

The board of supervisors in each county shall, at their session in October in each year, examine the assessment rolls of the several townships, wards, or cities, and ascertain whether the relative valuation of the real property in the respective townships, wards or cities, has been equally and uniformly estimated. If, on such examination, they shall deem such valuation to be relatively unequal, they shall equalize the same by adding to or deducting from the valuation of the taxable property in any township, ward, or city, or townships, wards, or cities, such an amount as in their judgment will produce relatively an equal and uniform valuation of the real property in the county, and the amount added to or deducted from the valuation in any township, ward, or city shall be entered upon the records. They shall also cause to be entered upon their records the aggregate valuation of the taxable real and personal property of each township, ward or city in their county as determined by them. The board shall also make such alterations in the description of any lands upon such rolls as may be necessary to render such description conformable to the requirements of this act. After such rolls shall have been equalized, each shall be certified to by the chairman and clerk of the board and be delivered to the supervisor of the proper township, ward, or city, who shall file and keep the same in his office.

APPENDIX "D."

CHAPTER 15.—THE STATE BOARD OF EQUALIZATION.

An Act to provide for a State BOARD OF EQUALIZATION.

(129) Section 1. *The People of the State of Michigan enact,* That there shall be a state board of equalization, to consist of the lieutenant governor, auditor general, secretary of state, state treasurer and commissioner of the land office, whose duty it shall be, in the year eighteen hundred and fifty-one, and every fifth year thereafter, to

equalize the assessments on all taxable property in the State except that paying specific taxes, as hereinafter provided.

(130) Sec. 2. It shall be the duty of the board to meet at the capitol in the village of Lansing, on the third Monday of August, and the persons composing it shall organize by choosing one of their number chairman, and the deputy auditor general, or one of the clerks in the office of the auditor general, shall act as secretary, who shall keep a record of the proceedings, which shall be certified by said chairman and secretary, and filed in the office of the auditor general.

(131) Sec. 3. The several persons constituting the board as herein provided, before entering upon the duties of their office, shall each take and subscribe the constitutional oath of office, before some person authorized to administer oaths; which oaths shall be filed and preserved with the proceedings of the board.

(132) Sec. 4. After said board shall have been organized, they shall proceed to examine the tabular statements of the board of supervisors of each county, provided for in the eighth section of this act, and to hear the representatives from the several boards of supervisors as hereinafter provided; and they shall determine whether the relative valuation between the several counties is equal and uniform, according to location soil, improvements, production and manufactories; and also whether the personal estate of the several counties has been uniformly estimated, according to the best information which can be derived from the statistics of the state, or from any other source. If, after such examination such assessment shall be determined relatively unequal, they shall equalize the same by adding to or deducting from the aggregate valuation of taxable real and personal estate in such county or counties, such percentage as will produce relative equal and uniform valuations between the several counties in the state: and the percentage added to or deducted from the valuations in each county, shall be entered upon their records; and the valuations of the several counties, as equalized, shall be certified and signed by the chairman and secretary of the board, and filed in the office of the auditor general, and shall be the basis for apportioning all state taxes until another equalization shall be made.

(133) Sec. 5. It shall be the duty of the auditor general, as soon as may be, after the determination of the state board of equalization shall be filed in his office, as provided in the preceding section, to send a certified transcript of the same to the treasurer of each county, who shall cause the same to be published in one or more papers in the county.

(134) Sec. 6. A meeting of the board of supervisors for the year eighteen hundred and ninety-one, shall be held on the fourth Monday of June, and on the fourth Monday of June every fifth year thereafter; and when convened, the board shall proceed to equalize the assessment rolls in the same manner as is provided in chapter twenty of the revised statutes of eighteen hundred and forty-six; and each of said supervisors shall add up the columns of their respective rolls, enumerating the number of acres of land, and the value of the real estate and personal property so assessed, so as to show the aggregate of each.

(135) Sec. 7. The board of equalizers shall hear any evidence which may be laid before them by any person appointed by any board of supervisors, and any representation made by such person in behalf of any county.

(136) Sec. 8. It shall be the duty of the clerk of each board of supervisors to make out a tabular statement from the aggregate of the several assessment rolls of the number of acres of land, and the value of the real estate and personal property in each township and ward, as assessed, and also the aggregate valuation of the real estate of each roll, as equalized, and make a certified copy thereof, signed by the chairman and clerk, and transmit the same to the auditor general on or before the second Monday of July following, who shall lay the same before the state board of equalization when organized: Provided that such statement and copy shall not embrace any property paying specific taxes.

(137) Sec. 9. Any three members of the board shall constitute a quorum for the transaction of business. The lieutenant governor shall receive three dollars a day for actual attendance, and ten cents a mile for travel in going to and returning from the seat of government, the usual traveled route, to be paid out of the treasury on the warrant of the auditor general.

APPENDIX "E."

Act 154 of the Public Acts of 1899 reads as follows:

AN ACT to amend sections twenty-one and twenty-two of act number two hundred six of the Public Acts of eighteen hundred ninety-three, entitled "An act to provide for the assessment of property, and the levy and collection of taxes thereon, and for the collection of taxes heretofore and hereafter levied; making such taxes a lien on the lands taxed, establishing and continuing such lien, providing for the sale and conveyance of lands delinquent for taxes, and for the inspection and disposition of lands bid off to the State and not redeemed or purchased, and to repeal Act number two-hundred of the Public Acts of eighteen hundred ninety-one, and all other acts and parts of acts in anywise contravening any of the provisions of this act," approved June one, eighteen hundred ninety-three, as amended by acts numbered twenty-five, one hundred fifty-four one hundred sixty-two and two hundred ninety-nine of the Public Acts of eighteen hundred ninety-five, and acts numbered two hundred six, two hundred fourteen, two hundred twenty-four, two hundred twenty-five, two hundred twenty-nine, two hundred forty and two hundred sixty-one of the Public Acts of eighteen hundred ninety-seven and to add ten new sections thereto, to stand as sections one hundred forty-five, one hundred forty-six, one hundred forty-seven, one hundred forty-eight, one hundred forty-nine, one hundred fifty, one hundred fifty-one, one hundred fifty-two, one hundred fifty-three and one hundred fifty-four, providing for the creation of a Board of State Tax Commissioners, charged with the duty of enforcing this act, and exercising supervisory control over officers administering the general tax laws of this State and reporting to the Legislature thereon, and empowered in certain cases to review assessment rolls and correct the same or add thereto, and to provide for the assessment and taxation of property omitted from the assessment rolls.

The People of the State of Michigan enact:

Section 1. That act number two hundred six of the public acts of eighteen hundred ninety-three, entitled "An act to provide for the assessment of property, and the levy and collection of taxes thereon, and for the col-

lection of taxes heretofore and hereafter levied; making such taxes a lien on the lands taxed, establishing and continuing such lien providing for the sale and conveyance of lands delinquent for taxes, and for the inspection and disposition of lands bid off to the State and not redeemed or purchased, and to repeal act number two-hundred of the Public Acts of eighteen hundred ninety-one, and all other acts and parts of acts in anywise contravening any of the provisions of this act," approved June one, eighteen hundred ninety-three, as amended by acts numbered twenty-five, one hundred fifty-four, one hundred sixty-two, and two hundred ninety-nine of the public acts of eighteen hundred ninety-five, and acts numbered two hundred six, two hundred fourteen, two hundred twenty-four, two hundred twenty-nine, two hundred forty and two hundred sixty-one of the public acts of eighteen hundred ninety-seven, be and the same is hereby amended by amending sections twenty-one and twenty-two and adding thereto ten sections, to be known as sections one hundred forty-five, one hundred forty-six, one hundred forty-seven, one hundred forty-eight, one hundred forty-nine, one hundred fifty, one hundred fifty-one one hundred fifty-two, one hundred fifty-three and one hundred fifty-four, as follows:

Sec. 21. In every case when any person or member of any firm or officer of any corporation shall willfully neglect or refuse to make out and deliver a true and correct sworn statement, under oath, administered by the supervisor or other assessing officer or members of the Board of State Tax Commissioners herein provided for or other officers, or shall answer falsely or refuse to answer questions concerning his property or property under his control, as required by this act, such person shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment in the county jail not less than thirty days nor more than six months, or by fine not less than one hundred dollars nor more than one thousand dollars, or by both such fine and imprisonment in the discretion of the court. And it shall be the duty of the supervisor, assessing officer, and each member of the Board of State Tax Commissioners whenever he is satisfied that any person liable to make such assessing statements is justly liable to such penalty to report the case to the prosecuting attorney of the county and make proper complaint for such prosecution.

Sec. 22. If the supervisor or assessing officer or a

member of the Board of State Tax Commissioners shall be satisfied that any statement so made is incorrect, or if, by reason of absence or other cause, said sworn statement can not be obtained from the person, firm or corporation whose property is so assessed, said supervisor, assessing officer or any member of the Board of State Tax Commissioners is hereby authorized and required to examine, on oath, to be administered by any of them, any other person or persons whom he may have good reason to believe, and does believe has knowledge of the amount or value of any property owned, held or controlled by such person so neglecting or refusing or omitting to be examined or to furnish such statement, and such supervisor or assessing officer is hereby authorized to set down and assess to such person, firm or corporation so entitled to be assessed, such amount of real and personal property as he may deem reasonable and just.

Sec. 145. It shall be the duty of the Governor by and with the advice and consent of the senate, within five days after this act shall have been approved by the Governor, to appoint three resident free-holders of this State, who shall be duly qualified electors thereof who shall constitue a Board of State Tax Commissioners, with powers and duties as prescribed under the provisions of this act, one of whom shall hold office until the thirty-first day of December, nineteen hundred; one of whom shall hold office until the thirty-first day of December, nineteen hundred, and for two years thereafter; the other of whom shall hold office until the thirty-first day of December, nineteen hundred and for four years thereafter, or until their successors shall be appointed and have qualified, and thereafter their successors shall hold office for a term of six years, and until their successors shall be appointed and have qualified. At the expiration of the term of office of the members of said board, their successors in office so long as this act shall remain in force, shall be appointed by the Governor, by and with the advice and consent of the Senate. All appointments which are provided to be made by the Governor under this section of the act, shall be made while the legislature is in session and not at any other time except in cases where vacancies in office shall occur otherwise than by expiration of the term of office of any member of said board. In case a vacancy in the office occurs otherwise than by expiration of the term, the Governor shall have the power to appoint to fill such vacancy at any time, and the person so appointed shall hold office until the next meeting of the legislature after such appointment, and no longer.

Sec. 146. Said board shall elect a secretary at a salary not to exceed fifteen hundred dollars per annum. The person so elected shall hold his office during the pleasure of said board and shall keep a record of all the proceedings of said board, which records with all other papers or proceedings of said board shall be a part of the records of the Auditor General's office, and of which the Auditor General shall be the lawful custodian. The secretary shall devote all his time to the duties of his office, and when said board is not in session, shall perform such duties as may have been assigned him by said board.

Sec. 147. The members of said board and the secretary thereof, shall take and subscribe the constitutional oath of office to be filed with the Secretary of State. The members of said board shall receive an annual salary of two thousand five hundred dollars, and shall devote their whole time to the discharge of the duties of their office, and they shall also receive their necessary expenses in the performance of their duties, both to be audited and allowed by the Board of State Auditors, and paid monthly by the State Treasurer, out of the general fund.

Sec. 148. Regular sessions of said board shall be held at the office of said board at the capitol, to be furnished by the Board of State Auditors. The said board and the members thereof shall have access to all books, papers, documents, statements and accounts on file or of record of any of the departments of State, subject to the rules and regulations of the respective departments relative to the care of the public records. It shall have like access to all books, papers, documents, statements and accounts on file or of record in counties, townships and municipalities. Said board shall have the right to subpœna witnesses upon a subpœna signed by the president of said board, and attested by the secretary thereof, directed to such witnesses, and which subpœna may be served by any person authorized to serve subpœnas from courts of record in this State, and the attendance of witnesses may be compelled by attachment to be issued by any circuit court in the State upon proper showing that such witness has been properly subpœnaed and has refused to obey such subpœna. The person serving such subpœna shall receive the same compensation now allowed to sheriffs and other officers for serving subpœnas. Said board shall have power to examine witnesses under oath, said oath to be administered by any member of said board or by the secretary thereof. Said board shall have the right to

examine books, papers or accounts of any corporation, firm or individual owning property liable to assessment, for taxes, general or specific, under the laws of this State, and any officer or stockholder of any such corporation, any member of any such firm, or any person or persons who shall refuse to permit said inspection, or neglect or fail to appear before said board in response to its subpœna, or testify, as provided for in this section, shall be deemed guilty of a misdemeanor, and shall be punished by a fine not exceeding one thousand dollars, or by imprisonment in the State Prison for a period not exceeding two years, or by both such fine and imprisonment, in the discretion of the court.

Sec. 149. Said board shall hold regular meetings on the first Tuesday of March, June, July, August, September and October in each year, and may hold adjourned sessions as may be deemed necessary by it for the proper performance of the duties devolving upon said board. The chairman may call special sessions of the board whenever and wherever in the State he may deem it advisable so to do, and shall call such special sessions upon the written request of two members.

Sec. 150. It shall be the duty of said board:

1. To have and exercise general supervision over the supervisors and other assessing officers of this State, and to take such measures as will secure the enforcement of the provisions of this act, to the end that all the properties of this State liable to assessment for taxation shall be placed upon the assessment rolls and assessed at their actual cash value.

2. To confer with and advise assessing officers as to their duties under this act, and to institute proper proceedings to enforce the penalties and liabilities provided by law for public officers, officers of corporations and individuals failing to comply with the provisions of this act; to prefer charges to the Governor against assessing and taxation officers who violate the law or fail in the performance of their duties in reference to assessment and taxation, and in the execution of these powers the said board may call upon the Attorney General or any prosecuting attorney in the State to assist said board.

3. To receive complaints as to property liable to taxation that has not been assessed, or has been fraudulently or improperly assessed, and to investigate the same, and

to take such proceedings as will correct the irregularity complained of, if found to exist.

4. To see that each county in the State be visited by at least one member of the Board as often as once each year, to the end that all complaints concerning the law may be heard; that information concerning its workings may be collected; that all assessing and taxation officers comply with the law, and all violations thereof be punished, and that all proper suggestions as to amendments and changes may be made.

5. To require from any officer in this State, on forms prescribed by said Board of State Tax Commissioners, such annual or other reports as shall enable said Board of State Tax Commissioners to ascertain the assessed valuations and equalized valuations of all property listed for taxation throughout the State under this act; the amount of taxes assessed, collected and returned delinquent, and such other matter as the Board may require, to the end that it may have complete and statistical information as to the practical operation of this act.

6. To inquire into and ascertain the valuation of the properties of corporations paying specific taxes under any of the laws of this State, and to ascertain the actual rate of taxation as based upon the valuation of said properties that is being paid by said corporations, and to this end said Board shall require reports from, and make investigations, as to the properties of such corporations in the same manner and to the same extent as if said corporations were paying taxes under this act.

7. To make diligent investigation and inquiry concerning the revenue laws and systems of other states and countries, so far as the same is made known by published reports and statistics, and can be ascertained by correspondence with officers thereof, and with the aid of information thus obtained, together with experience and observation of our own laws, to recommend to the legislature, at each regular session thereof, such amendments, changes or modifications of our revenue laws as seem proper and necessary to remedy injustice and irregularities in taxation, and to facilitate the assessment and collection of public revenues.

8. To further report to the legislature at each regular session thereof or at such other times as the legislature may direct, the whole amount of taxes collected in the State for all purposes, classified as to State, county and

township and municipal purposes, with the sources thereof; the amount lost; the causes of the loss; the proceedings of said board, and such other matters of information concerning the public revenues as it may deem of public interest.

9. To further report to the legislature at the beginning of the regular sessions, specifically, the true valuation of the properties of corporations paying specific taxes and the rate of taxation actually paid on said valuation and the true valuation of all other properties of the State and the rate of taxation the same are paying, to the end that the legislature shall have the information necessary to rearrange the rate or system of taxation on said properties, so that all taxable properties of the State may be taxed uniformly.

10. To be present at each meeting of the State Board of Equalization and furnish such information as said Board may require and that may assist in the performance of the duties imposed upon it by law.

Sec. 151. The Board of State Tax Commissioners shall, on or before the fifteenth day of December in each year, make an annual report to the Governor of this State, setting forth the workings of said Commission during the preceding year, and containing the findings and recommendations of said Commission in relation to all matters of taxation. The Board of State Auditors shall cause five thousand copies of said annual report to be printed on or before the fifteenth day of January succeeding the making of said report. Three hundred copies of said report shall be placed at the disposal of the State Librarian for distribution and exchange.

Sec. 152. After the various assessment rolls required to be made under this act shall have been passed upon by the several boards of review, and prior to the time fixed for equalization and apportionment of State and county taxes, the said several assessment rolls in the State shall be subject to inspection by said Board of State Tax Commissioners or by any member thereof; and in case it shall appear, or be made to appear, to said Board that property subject to taxation has been omitted from said roll, or individual assessments have not been made in compliance with law, the said Board may issue an order directing the assessor whose assessments or failure to assess is complained against, to appear with his assessment roll at a time and place to be stated in said order, said time to be

not less than seven days from the date of issuance of said order, and the place to be at the office of the board of supervisors at the county seat or such other place in said county in which said roll was made, as said board shall deem most convenient for the hearing herein provided. A notice of the time and place that said assessor is ordered to appear with said roll, together with a statement of the persons whose property or whose assessments are to be considered shall be published in a newspaper published at the county seat of said county if there be one; if not, in some paper printed in said county if there be any, five days before the time at which said assessor is required to appear, and where practicable personal notice by mail shall be given to said persons prior to said hearing. A copy of said order shall also be served upon the supervisor or assessing officer in whose possession said roll shall be, at least three days before he is required to appear with said roll. The said board or any member thereof shall appear at the time and place mentioned in said order, and the supervisor or assessing officer upon whom said notice shall have been served shall appear also with said assessment roll. The said board or any member thereof, as the case may be, shall then and there hear and determine as to the proper assessment of all property and persons mentioned in said notice, and all persons affected or liable to be affected by the review of said assessments thus provided for may appear and be heard at said hearing. In case said board or the member thereof who shall act in said review, shall determine that the assessments so reviewed are not assessed according to the law, he or they shall, in a column provided for that purpose, place opposite said property the true and lawful assessment of the same. As to the property not upon the assessment roll, the said board or member thereof acting in said review, shall place the same upon said assessment roll by proper description, and shall place thereafter, in the proper column, the true cash value of the same. In case of review under the provisions of this section, the said board or the member thereof acting in said review shall certify under his hand officially and spread upon said roll a certificate of the day and date at which said assessment roll was reviewed by him, and the changes by him made therein. For appearing with said roll as required herein the supervisor or assessing officer shall receive the same per diem as is received by him in the preparation of his assessment roll, to be presented to and paid by the proper officers of the municipality of which he is the assessing officer, in the manner as his other compensa-

tion is paid. The action of said board or member taken as provided in this act shall be final.

Sec. 153. In case it shall appear or be made to appear to said board that any assessment roll in the State is so grossly irregular and unlawfully assessed that adequate compliance with the law can not be secured except by a general review of said assessment roll, said board may make and issue an order that said assessment roll shall be subject to general review, and the time and place shall be stated in said order, at which said roll shall be reviewed, and under said order the assessor whose assessment or failure to assess is complained against shall be required to appear with his assessment roll at the time and place thus determined, said time to be not less than fourteen days from the issuance of said order, and the place to be at the office of the board of supervisors at the county seat, or such other place in said county in which said roll was made, as said board shall deem most convenient for the hearing herein provided for. A notice of the time and place that said assessor is required to appear with said roll, together with a statement that said roll will be subject to general review and that all persons interested therein may be heard at said time, shall be published in a newspaper published at the county seat of said county, if there be one; if not, in some paper printed in said county, if there be any, at least seven days before the time at which said assessor is required to appear. A copy of the order made as aforesaid shall be served upon the supervisor or assessing officer in whose possession said roll shall be, at least three days before he is required to appear with said roll. The said board or any member thereof shall appear at the time and place mentioned in said order and the supervisor or assessing officer upon whom said notice shall have been served shall appear also with said assessment roll. The said board or any member thereof, as the case may be, shall then and there review said assessment roll and may hear and determine complaints as to the said assessment roll and the assessments of property therein, and he or they shall have power to determine in accordance with law, the amount at which said assessments shall be placed, and to change the same, so that said assessments may comply with the law. Also to place upon said roll property omitted therefrom in the same manner as provided in the last preceding section. The determination of said board or member thereof acting in said review shall be placed in a column provided for that purpose, and shall proceed in

all respects as provided in the last preceding section, and the supervisor or assessing officer shall receive the same compensation as provided in said section.

Sec. 154. If it shall be made to appear to said board at any time after the last meeting of the State Board of Equalization that any property liable to taxation has not been assessed for any previous year as hereinafter provided, the said board shall report the same to the proper assessing officer and the same shall be listed for taxation upon the next assessment roll that shall be made and shall be valued as all other property. The said board shall further certify to the board of supervisors of the several counties at the October session thereof, next after said property shall be then listed for taxation, the description of said property and the several years that the same has been liable for, and escaped taxation, and said board of supervisors shall ascertain the rate of taxation for said several years and shall order the taxes for said years to be spread against said property upon the valuation for the then current year, and the same shall be so spread in a column provided for that purpose, and it shall constitute a charge against the person and property, and be collected as other taxes: *Provided, however,* That this provision shall not be deemed to relate back prior to the going into effect of this section: *And provided further,* That in case of change in ownership of the property omitted said taxes shall not be spread against said property prior to the last change of ownership.

This act is ordered to take immediate effect.

Approved June 23, 1899.